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55

Ad June 1916



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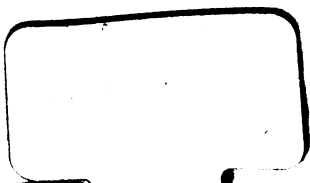
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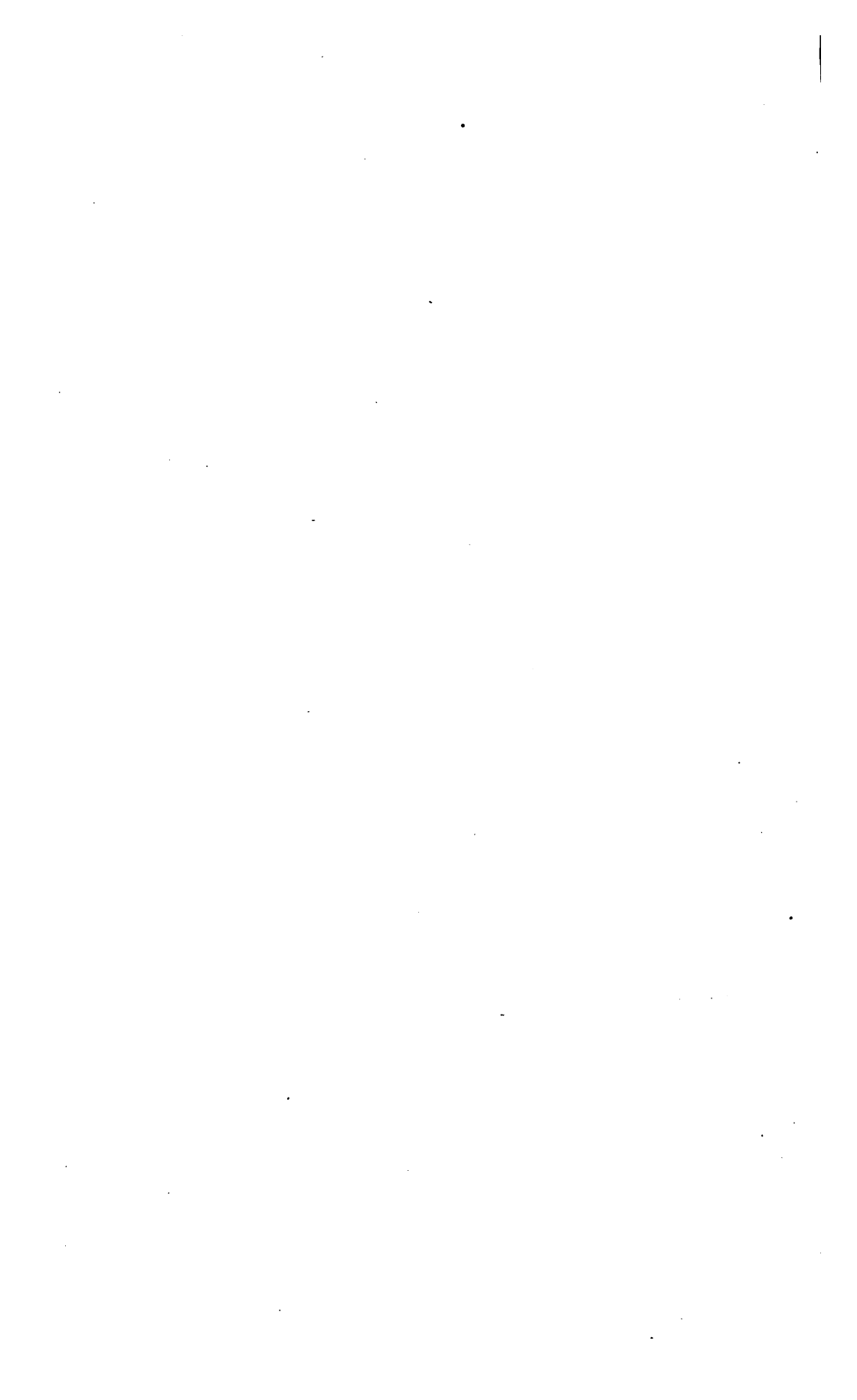
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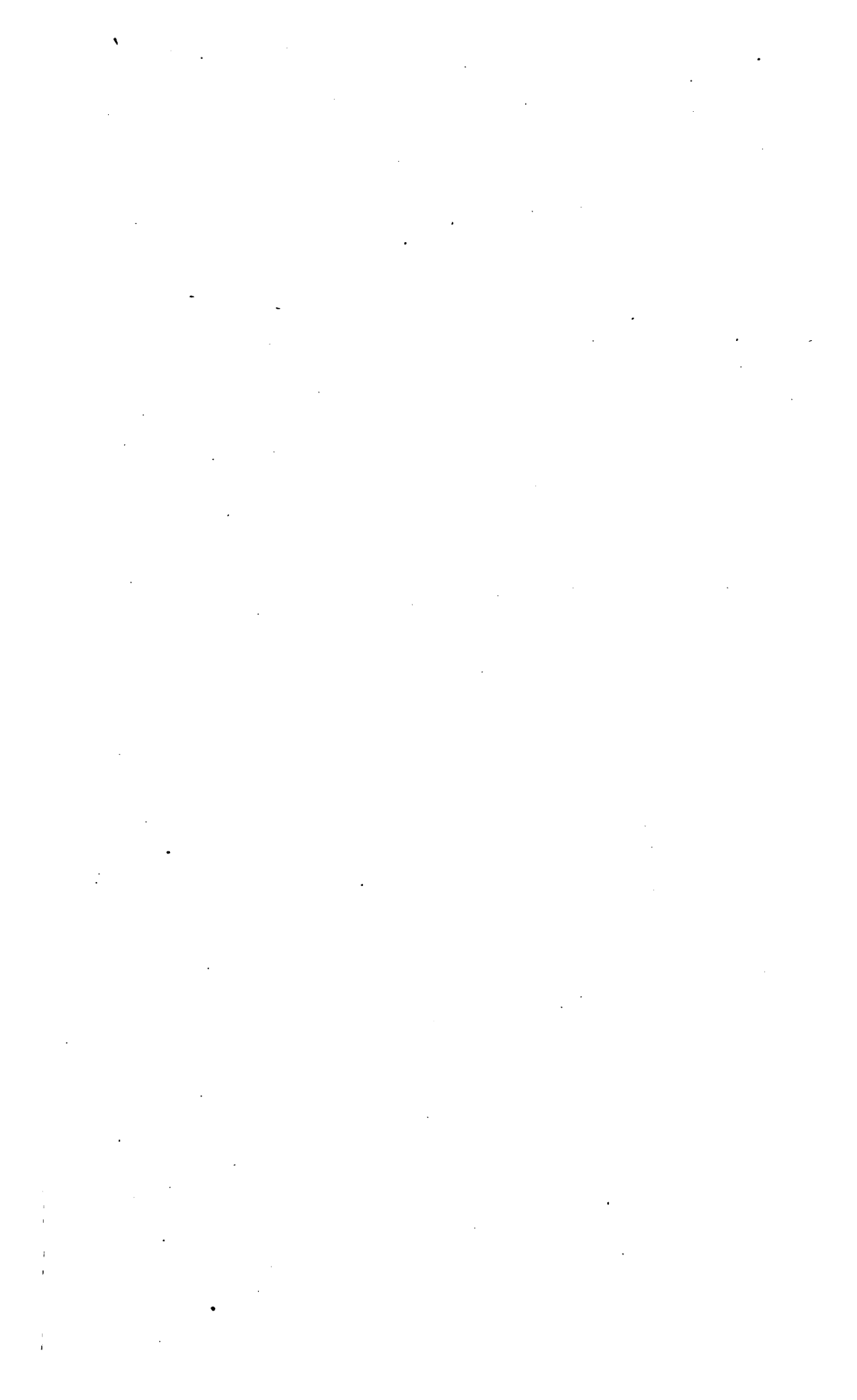
NEW YORK

Received Apr. 29 1916









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United States. Office of
= Commissioner of 25-
Internal Revenue. ~~HS~~.
COMPILATION OF DECISIONS

C
RENDERED BY THE

COMMISSIONER OF INTERNAL REVENUE

FROM

JANUARY 1 TO DECEMBER 31, 1900.

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VOLUME 3.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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TREASURY DEPARTMENT,
Document No. 2217.
Commissioner of Internal Revenue.

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INTRODUCTORY.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 2, 1901.

In accordance with decision No. 21871 of the honorable Secretary of the Treasury, dated December 23, 1899, published in **TREASURY DECISIONS**, volume 2, No. 26, December 28, 1899, the decisions of the Commissioner of Internal Revenue, commencing with No. 1, volume 3, dated January 4, 1900, were numbered from 1, beginning a new series.

The following rulings of this office were originally published in weekly **TREASURY DECISIONS** during the year 1900.

Similar compilations of rulings for the years 1898 and 1899 were found to be so useful to the Service and the public generally that large editions were called for and distributed. It is believed that the present compilation will be found equally important, bringing, as it does, the rulings up to the latest dates.

For convenience of reference, the original numbering has been retained.

Rulings which have been revoked are omitted.

J. W. YERKES, *Commissioner.*

DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE.

ABATEMENT AND REFUNDING.

See DECISIONS (legacies) 143. (Miscellaneous) 159. (Fermented Liquors) 144; 175.

(30.)

Abatement of taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 1, 1900.

To collectors of internal revenue:

The attention of collectors is called to the following new and revised forms, viz :

Form No. 47, revised January, 1900—Claim for remission of taxes.

Form No. 53, revised January, 1900—Certified return of deputy collector of taxes found to be uncollectible.

Form No. 467—Claim for abatement of taxes in column 10½ of the assessment list.

The new forms contain the collector's certificates, which were formerly on Forms 48, 48½, and 333; and the use by collectors of Forms 48, 48½, and 333 is, therefore, unnecessary.

Collectors will in future use the new forms instead of the Forms Nos. 47 and 53 heretofore in use, and will discontinue the use of Forms Nos. 48, 48½, and 333.

Attention is called to the instruction on Form 53, revised, under the head of "Cause of inability to collect."

In every case of an uncollectible tax, the collector or his deputy should give under this head a detailed history of all proceedings had for collection and the cause of failure to collect. If the space is not sufficient, the data can be furnished on a separate paper attached to the form.

Where bonds are placed in suit, the date of commencement of suit must be given on Form 53, as well as a detailed statement of the proceedings by distraint against the principal. In order to receive credit, the collector must furnish satisfactory proof of due diligence. Where principal and sureties are all found to be insolvent, demand should nevertheless be made upon all parties.

The new forms should be distributed promptly to the deputies, with a reference to this circular letter.

All claims on Forms 47, 467, and 53 may be forwarded to this office, when completed, without an inclosing schedule or any mere letter of inclosure.

Affidavits and other papers supporting claims should be securely attached thereto.

Claims already in preparation which have not been scheduled may be adapted to the new method by attaching them to the new forms and filling out the collector's certificate and the deputy's affidavit.

G. W. WILSON, *Commissioner*.

(134.)

Allowance for and redemption of internal-revenue stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 24, 1900.

To collectors of internal revenue and others concerned:

The appended regulations, prescribed by the Secretary of the Treasury in pursuance of "An Act authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal-revenue stamps," approved May 12, 1900, are herewith published as series 7, No. 27, and promulgated for the instruction of internal-revenue officers and the information of all persons whom they may concern.

G. W. WILSON, *Commissioner*.

REGULATIONS.

TREASURY DEPARTMENT, May 24, 1900.

The act entitled "An Act authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal-revenue stamps," approved May 12, 1900, provides—

"That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected. Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner of Internal Revenue, or until satisfactory proof has been made showing the reason why the same can not be

returned; or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid: *Provided*, That documentary and proprietary stamps issued under the provisions of 'An Act to provide ways and means for war expenditures, and for other purposes,' approved June thirteenth, eighteen hundred and ninety-eight, may be redeemed only when presented in quantities of two dollars or more, face value: *Provided further*, That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government.

"SEC. 2. That the finding of facts in and the decision of the Commissioner of Internal Revenue upon the merits of any claim presented under or authorized by this Act shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

"SEC. 3. That all laws and parts of laws in conflict with any of the provisions of this act are hereby repealed."

In pursuance of the authority conferred by the act aforesaid, the following regulations are hereby prescribed for the allowance for or redemption of all such internal-revenue stamps issued under authority of law to denote the payment of any internal-revenue tax as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

CLAIMS TO BE MADE ON FORM 38.

Claims for the allowance for or redemption of stamps must be made on Form 38 in the manner prescribed by the Commissioner of Internal Revenue, and the facts relied upon in support of the claim should be clearly set forth under oath. The claim should be made by the bona fide owner of the stamps presented for allowance or redemption or an agent or representative of such owner.

The claim should be supported by the certificate of the deputy collector who personally investigated the statements made by the claimant, setting forth, after careful inquiry, his belief as to the statements therein made, and by the certificate of the collector from whom the stamps were purchased, setting forth the date of purchase, by whom purchased, kind of stamps, denomination, number, and amount, and his certificate that the facts set forth in the affidavit of the claimant have been carefully investigated under his direction, and his opinion as to the truth or falsity of said statements, together with such recommendation as to the allowance or disallowance of said claim as in his opinion seems just and proper.

All claims on Form 38 shall be forwarded to the Commissioner of Internal Revenue for examination, and he may, when he deems it necessary to complete the evidence of the facts set forth in any claim, require additional statements, certificates, or affidavits from the claimant, collector, or any other person, and may cause such investigation to be made and such instructions complied with as in his opinion are necessary to a proper adjustment of the claim.

CERTIFICATION OF ALLOWANCE BY THE COMMISSIONER.

Claims allowed by the Commissioner of Internal Revenue on Form 38 shall be certified by him to the Auditor for the Treasury Department, who shall, in the absence of fraud or mistake in mathematical calculation of the amount due claimant on the basis of the allowance by the Commissioner, certify the amount allowed to the Division of Book-keeping and Warrants. The allowance of the Commissioner as set forth in his certificate is, in the absence of fraud or mistake as aforesaid, conclusive as to the facts authorizing the allowance, the legality of the claim, and the amount due the claimant. When mistake in mathematical calculation on the basis of the allowance of the Commissioner appears in any claim certified as aforesaid, the Auditor shall return said claim to the Commissioner, who shall correct said mistake, and again certify the claim as corrected to the Auditor. If fraud in any claim so certified is discovered by the Auditor, he shall transmit said claim, together with a statement of the facts which in his opinion constitute the fraud, to the Secretary of the Treasury. The Secretary may, whenever in his judgment the interests of the Government require it, suspend payment, and direct the reexamination of any claim for the redemption of internal-revenue stamps or the reexamination of any facts connected therewith.

The Commissioner of Internal Revenue, when he deems it necessary to the determination of the legal rights of the claimant or to the proper adjustment of any claim, shall refer the claim to the Secretary of the Treasury, who may apply for a decision to the Comptroller of the Treasury, who shall render his decision upon any question of law involved in said claim affecting the payment to be made to the claimant.

I hereby approve and prescribe the foregoing regulations.

L. J. GAGE, *Secretary of the Treasury.*

(149.)

Allowance for and redemption of internal-revenue stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 6, 1900.

To collectors of internal revenue and others concerned:

The following supplemental regulations prescribed by the Secretary of the Treasury in pursuance of "An Act Authorizing the Commissioner of Internal Revenue to redeem, or make allowance for internal revenue stamps," approved May 12, 1900, are hereby published as supplemental to series 7, No. 27, and promulgated for the instruction of internal-revenue officers and the information of all persons whom they may concern.

G. W. WILSON, *Commissioner.*

Regulations supplemental to regulations of May 24, 1900, series 7, No. 27, relative to allowance for or redemption of internal-revenue stamps under the act of May 12, 1900.

TREASURY DEPARTMENT, June 6, 1900.

In pursuance of the authority conferred by the act of May 12, 1900, the following regulations as to the forms upon which claims for allow-

ance for or redemption of internal-revenue stamps should be prepared are hereby prescribed :

CLAIMS ON FORM 46.

In cases where documentary or proprietary stamps have been affixed to instruments or articles not requiring them, and canceled, or where, by error, stamps of greater value than that required by law have been used, claims for the amounts paid in error or in excess should be made on Form 46, accompanied by the stamps, and, where practicable, by the instruments to which the stamps have been erroneously attached, or certified copies thereof.

These instructions as to the use of Form 46 will also apply to cases where an instrument is duly stamped and is accidentally injured or found to be defective, and a substitute is prepared and duly stamped, or where the instrument is not used.

In cases where penalties have been assessed or collected in connection with a special tax, and a claim is made for the refunding of the amount paid for the special-tax stamp, such claim should be made on Form 46, and should include the penalty paid.

All other claims for the redemption of stamps should be made on Form 38.

I hereby approve and prescribe the foregoing regulations.

L. J. GAGE, *Secretary of the Treasury.*

(151.)

Preparation of Form 53.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 7, 1900.

To collectors of internal revenue:

In preparing Form 53, revised January, 1900, claims for credit for taxes found to be uncollectible or taxes placed in suit, the address of the party assessed should appear in every case.

G. W. WILSON, *Commissioner.*

(153.)

Claims for refund of penalties.

Claims for refund of penalties paid for failure to make returns for special taxes in July, 1898.—Commissioner of Internal Revenue has no power to refund penalties collected "with authority."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 11, 1900.

To collectors of internal revenue:

In a circular letter dated September 3, 1898 (T. D. 20001), this office authorized collectors of internal revenue to report certain classes of special-tax payers for assessment without the 50 per cent penalty.

In a subsequent ruling this authority was limited to the 30th of September. On the 10th of September, 1898, in view of the fact that a large number of persons made liable to special taxes under the act of June 13, 1898, who had failed to make their returns in the month of July, had *paid* the 50 per cent penalty, this office authorized the presentation of claims for refunding. Under this authority a large number of claims have been presented, some of which have been allowed and paid. Others have subsequently been allowed, submitted to the Auditor for the Treasury Department, and disallowed by him in accordance with the opinion of the Comptroller of the Treasury dated March 31, 1900. Other similar claims are still on file in this office, and will, for the present, be suspended.

The Comptroller, in his opinion of March 31, 1900, takes the ground that the penalties were collected *by authority of law*, and that the Commissioner of Internal Revenue, who is authorized to pay back all penalties collected without authority, has no power to refund penalties collected "with authority." I concur in this opinion, and while collectors should receive and forward the claims as usual, such claims will not in future be allowed upon the ground heretofore adopted, that the claimants "had neither knowledge nor information that special-tax payers were required to make sworn returns."

In all claims of this character now before the Auditor for the Treasury Department, as well as those now on file in this office and those which may be presented, if the claimants can show that the required returns were made in the calendar month in which their liability began, or that the delay in making the returns was caused by sickness or absence and did not exceed the limit, or that notice of their liability was given either verbally or in writing to the collector or deputy collector within the calendar month in which the liability began, upon presentation of such facts, the claims now on file in this office, or those which may hereafter be presented, will be considered; and in those cases which have been disallowed by the Auditor new findings of facts will be prepared, based upon the additional evidence which may be presented, and the Comptroller of the Treasury will be requested to reopen the claims for further consideration.

G. W. WILSON, *Commissioner*.

(182.)

Stamp tax—Beer.

Reopening and consideration of claims for refunding of the 7½ per cent discount on beer stamps purchased July 24, 1897.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1900.

SIR: In reply to yours of the 3d instant, relative to the 7½ per cent discount on beer stamps purchased July 24, 1897, you are respectfully

referred to Treasury Decisions, vol. 3, No. 28, of July 12, 1900, page 15, ruling No. 175. This, you will see, modifies or reverses ruling No. 19087, dated March 12, 1898.

Claims for the refunding of 7½ per cent discount on beer stamps purchased July 24, 1897, now on file in this office and undisposed of, will be taken up and disposed of in accordance with ruling No. 175 at an early day. Claims of this character which have been rejected will be reopened and allowed upon the receipt of information that no suit had been commenced, or if a suit has been commenced, upon the written agreement of the claimant that the suit will be dismissed upon the allowance of the claim.

Claims hereafter presented will be considered and disposed of in accordance with said ruling, provided that two years have not expired since the payment of the 7½ per cent discount.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. W. FRANK KINNEY, *Collector Internal Revenue, Hartford, Conn.*

(212.)

Documentary stamps—Preparation of claims for refunding.

Claims should be made on Form 46, accompanied by stamps, and by the instruments or a copy thereof.

In cases of claims for amounts paid for stamps used on deeds of property sold subject to mortgage, it must be shown in every case whether the mortgage was assumed.

Refund will be made in the name of the party who bore the burden of taxation.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., September 14, 1900.

SIR: In your letter of the 7th instant you inquire whether in cases where revenue stamps have been affixed to instruments and the same have been recorded, and it is afterwards learned that stamps were not required, there is any way of obtaining redress. In reply, you are informed that claims for the refunding of amounts paid for documentary stamps used in error or excess may be made on Form 46. The stamps on account of which the refund is asked must accompany the claim, or an affidavit be furnished showing their total destruction. The original instrument to which the stamp was affixed should also accompany the claim, unless the claimant desires to retain it, in which case a certified copy should be filed with the claim.

The claimant must state under oath who paid for the stamps, whether the full face value was paid, and whether the purchaser has been reimbursed by any person or persons. The refund must be made in the name of the party who bore the burden of the erroneous taxation, and no claim can be considered unless presented within two years after the purchase of said stamps from the Government, and unless stamps are presented in quantities of \$2 or more face value. If stamps are removed from the instrument which has been erroneously or excessively stamped,

the removal should be made in the presence of a collector or deputy collector of internal revenue.

In cases where claims are based upon the ground that deeds of conveyance were stamped in accordance with the value of the property conveyed instead of upon the equity of redemption, it is necessary that the claimant should show the actual value of the property conveyed, the amount of mortgages upon said property, and whether these mortgages or any portion thereof were assumed by the purchasers, or whether the purchasers in any manner agreed to pay said mortgages. Where one of two or more grantors or grantees in a deed of conveyance of real estate, or an apparently disinterested person makes a claim for refunding of money paid for documentary stamps used in error or excess, waivers must be made from all the other parties to the effect that they have no interest in the claim for refunding.

The presumption in all cases is that the party who executed the deed paid for and affixed the stamps thereto. In cases where other parties pay for the stamps and make the claim, the fact of the payment must be clearly shown.

Respectfully, G. W. WILSON, *Commissioner*.
 Mr. EDWARD W. CAMPBELL,
Cashier Fidelity Trust Company, Newark, N. J.

(220.)

Abatement of taxes.

Claims for abatement of taxes must be filed with collectors of internal revenue.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 2, 1900.

GENTLEMEN: In reply to your letter of the 12th ultimo you are informed that *all* claims for the abatement or refunding of internal-revenue taxes should be filed through collectors of internal revenue.

This applies as well to cases of abatement where suits have been brought as to those in which suits have not been brought.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
 Messrs. MARTIN & WEBB, *Asheville, N. C.*

(237.)

Refunding claims—Barred by statute.

Claims must be presented within two years after payment.—Right of action accrues on the payment of the tax and not upon the date of subsequent decisions or rulings.—Claims filed with collectors two years or more after payment should be forwarded to the Commissioner of Internal Revenue for his action.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 25, 1900.

SIR: In reply to the latter clause of your letter of the 15th instant, you are informed that all claims for the refunding of taxes in order to

receive consideration must be presented within two years after the payment of the tax. In the case of legacy taxes the right of action accrued at the time the taxes were paid, and not May 14, 1900, the date of the decision of the United States Supreme Court in relation to taxes on legacies. Where parties present claims for the refunding of taxes two years after payment, you should receive such claims and forward them to this office in order that the Commissioner may decide whether they are barred by section 3228, Revised Statutes. It frequently occurs that, while the formal application is not presented within two years, the taxpayer has applied by letter to this office for the refund, and in no case should the collector refuse to forward a claim for the reason that it was not presented to him within two years after payment.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. JAS. D. GILL, *Collector Third District, Boston, Mass.*

(238.)

Claims for the refunding of taxes.

Date of receipt of claims by collectors and deputy collectors to be entered on record Book No. 22.—Collectors should certify on claims the date of receipt.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 30, 1900.

To collectors of internal revenue:

From correspondence received at this office it is noted that in some instances the dates of the receipt by collectors of claims for the refunding of taxes have not been made a matter of record and can not be furnished when required by this office. In some cases it is important that the exact date of the filing of such claims with the collector or deputy collector should be known.

Collectors are, therefore, instructed to rule off a column on the extreme right of Book No. 22, "Record of claims for abatement and refunding," and insert therein the date when the claim was received by them; also, in certifying to claims, to include in the body of their certificate on each claim the date when the claim was received. They should also instruct their deputy collectors to keep a record of claims for refunding received by them, and to note therein the date of the receipt, and to include in their affidavit the date when the claim was first received by them.

G. W. WILSON, *Commissioner*.

(248.)

Refund—Amounts paid for documentary stamps used in error or excess.

Original instruments to which stamps are affixed or certified copies thereof must be filed.—Collectors' or deputy collectors' certificates as to copy is sufficient.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 20, 1900.

SIR: The claims of Mary Nethercut, of Manchester, and William Hunter, of Greene, Iowa, for the refunding of \$4 and \$6, respectively, amounts paid for documentary stamps used in excess on deeds of conveyance, have been allowed and submitted to the Auditor for the Treasury Department for his action.

Inclosed herewith please find the original deeds accompanying these claims, which you will please return to the claimants.

In all cases of claims for the refunding of amounts paid for documentary stamps used in error or excess, the original instruments to which the stamps were affixed, or certified copies thereof, must be forwarded to be filed with the claim. The original should not be forwarded except in cases where the claimants are willing that they may remain upon the files of the Department. This office does not, however, insist that copies of deeds, mortgages, or other like instruments must be certified by a clerk of a court. It is sufficient for the purposes of this office if the copy is certified by the collector or deputy collector to be a true copy.

Before removing stamps from original papers collectors and deputy collectors should satisfy themselves that the stamps were used in error or excess, and that the claim was presented within two years after the use of the stamps. In cases of doubt on these points the original papers with stamps affixed should be retained by the collector until this office considers the claim.

Respectfully,
J. W. PATTERSON, *Collector Third District, Dubuque, Iowa.*

G. W. WILSON, *Commissioner.*

ACCOUNTS.

(18.)

Gaugers', storekeepers', and storekeepers and gaugers' accounts—Travel orders.

(Amended by Decision No. 65.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 22, 1900.

To collectors of internal revenue:

In consequence of a change in the manner of transacting business between this office and that of the Auditor for the Treasury Depart-

ment, relating to gaugers', storekeepers', and storekeepers and gaugers' accounts, your attention is directed to the following instructions:

Hereafter all accounts of these officers where any expenses are incurred must be authenticated by a travel order, which should be dated and signed by the collector and be delivered to the gauger, storekeeper, or storekeeper and gauger before any expenses are incurred.

When the account is forwarded to this office, a copy of the travel order authorizing the expenses must be attached to it.

A revised Form 150 has been prepared that contains a new and more specific statement in the collector's certificate than formerly, which must be used hereafter in all cases.

At the end of the certificate the names of the distillers and rectifiers embraced in it must be given, or a definite reference to their names be made, as they are entered in the expense account.

Blanks for the travel order will be furnished by this office.

No accounts after those for the month of January, 1900, will be allowed which are not presented in exact accordance with these instructions.

G. W. WILSON, *Commissioner*.

(65.)

Collectors to pay fees and expenses of gaugers and expenses of storekeepers and of storekeeper and gaugers.

(Amended by Circular 587, Decision No. 258.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 8, 1900.

To collectors of internal revenue:

Beginning with the month of April, 1900, all gaugers will be paid their fees and expenses, and all storekeepers and storekeeper and gaugers their expenses (as well as the compensation) by the collectors for the districts to which these officers are assigned.

Form 150 has been revised accordingly. When these accounts have been paid, they should be scheduled on Form 469 and forwarded to this office.

Form 107 has also been revised, and in future the expenses of storekeepers and of storekeeper and gaugers will be shown on that form instead of on Form 150 as heretofore, and be paid by the collectors. Where expense accounts are too lengthy to be entered on Form 107 (such as accounts of general storekeepers), they can be made up on Form 150 or blank paper, and attached to Form 107, and the total amount of expenses, together with fees, taken up thereon.

The new Form 469, and revised Forms 44½, 107, 150, and 42, are now in the hands of the printer, and a sample of each will be mailed to collectors in a few days.

Collectors should include in their requisitions (Form 42) for funds for April, a sufficient amount to pay these additional compensations and estimated expenses.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(69.)

Deputy collectors' diary report and monthly account for services.

(Amended by Circular No. 572, Decision 137, and Circular No. 577, Decision 184.)

[Int. Rev. Circular No. 573—Revised.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 10, 1900.

To collectors of internal revenue:

Hereafter deputy collectors will be governed by the following instructions in preparing their diary report and monthly account for services:

1. The account, Form 63½, should show the date, name of person or firm visited, the place, street, and number, if any, the occupation, the registered number, in case of a manufacturing establishment having a registered number, with exceptions hereinafter noted; the miles traveled by railroad, bus, or other means of transportation, and the expense incurred for same, and when the travel is not by public conveyance a voucher for all items above \$1 must be furnished, at what places meals and lodging are procured, the expense of each, and in all cases a voucher must be furnished where more than \$1 is spent in one place (many deputies confound this with the expense of one day), or a statement should be made to the effect that the meals and lodging were procured from different persons, at different times, and that no one expenditure exceeded \$1, except where a voucher has been furnished.

2. Where street and street number can be given, the name of the person or firm may be omitted, except in case of manufacturers other than tobacco, snuff, cigars, and cigarettes.

3. The names of manufacturers, except tobacco, snuff, cigars, and cigarettes, must be given in all cases, as well where street and street number can be given as where street and street number can not be given.

4. Where street and street number can not be given, the names of all persons visited must be given.

5. The names of manufacturers of tobacco, snuff, cigars, and cigarettes may be omitted where the street and street number can be given, but the other information required must be given, and where street and street number can not be given the name must also appear.

6. In case of deputy collectors assigned to revenue agents, the name of the State and district in which the place of business of the person

or firm visited is located should appear, in addition to the other information required.

7. After April 1, 1900, where the division deputy uses his own horse, or horse and buggy, he will be allowed hire at the rate of \$1 per day for not to exceed twenty days in each month, but in no case will hire be allowed for any day on which no traveling is done, nor any amount in excess of \$30 per month, except as stated in paragraph 13. The use of horse, or horse and buggy, in cities having street cars will be limited to the time which in the judgment of this office should be required to visit breweries, cigar factories, and other places requiring periodical inspection, which are inaccessible by street cars or other public conveyance, in no case to exceed three days per month.

8. Where the deputy collector does not use his own horse, or horse and buggy, charges for livery will be allowed at the rate of not to exceed \$1.50 per day for not to exceed twenty days in each month, but in no case will charges for livery be allowed for any day on which no traveling is done, nor any amount in excess of \$30 per month, except as stated in paragraph 13.

9. The allowance to be made under paragraphs 7 and 8 of this circular does not apply to deputy collectors assigned to special duty under the collector or revenue agent, whose duties in emergencies, or because of the distance traveled, compel them to incur expenses in excess of the ordinary expenses of division deputy collectors.

10. This circular is not to be construed as authorizing an expenditure in the aggregate in excess of the annual allowance made to the collector for the expenses of division deputies, or the employment of a horse, or horse and buggy, where the traveling can be done by public conveyance at a less expense without jeopardizing the interests of the Government.

11. Collectors are expected to see that the expenses of division deputy collectors are reduced to a minimum, and to this end they should instruct them to make the most favorable terms for livery, and advise them that this office will encourage deputies to use their own conveyances.

12. If, in any case, a deputy, whose practice it has been to use his own conveyance, is compelled to hire livery, the reasons for so doing must be fully stated on Form 63½, and if satisfactory to this office, the charges will be allowed, but in no case in excess of \$1.50 per day nor \$30 in any one month for the combined use of livery and the deputy's own conveyance, except as stated in paragraph 13.

13. Where the necessities of the Service demand an expenditure for livery in excess of the above rates, because of the distance traveled, the character of the roads, and the services performed, the deputy will state fully the reasons for such extra charges, and, if satisfactory to this office, the charges will be allowed within the limits of the annual allowance, but such charges will be allowed only in exceptional and extreme cases, and except in such cases the deputy will be governed by paragraphs 7

and 8, and any effort on the part of deputy collectors to evade these regulations, directly or indirectly, or to divert the allowance for livery or other expenses from the purpose for which the allowance is made, or to increase their net compensation, or to promote private interests, will result in a recommendation for removal from the Service of the officer so offending.

14. Where livery is hired by the month, or for a number of days in each month, arrangements should be made with one person or firm, and by this means the most favorable terms secured. The same rule should govern in this case as in private affairs.

15. The practice of returning home each night should be discontinued. A route should be laid out, and all parties along that route visited in one trip.

16. One day each week is deemed sufficient, ordinarily, for a deputy to spend at his headquarters, "answering correspondence," etc.

17. Canvassing in a city should be so systemized as to avoid long trips between places, when practicable.

18. Deputies must not visit distilleries and cigar factories, etc., for the sole purpose of collecting monthly reports, which should be forwarded to the deputy at his headquarters, neither is a deputy expected to act in the capacity of a bookkeeper to such persons, nor is he expected to canvass these places before the 10th of the month, in order that a manufacturer may be able to swear to his report before the deputy collector.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(136.)

Collection of public moneys.

[Int. Rev. Circular No. 571.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 28, 1900.

To collectors of internal revenue:

The reports of the accounting agents of this office who are charged with the duty of examining offices of collectors of internal revenue show that there is no uniform system of organization of the force employed in the offices of collectors, and that in some instances the system under which the work of the office is performed is defective to such an extent as to prevent a satisfactory verification of the account of moneys collected.

In view of this fact, collectors are informed that any system under which public funds may be withheld from deposit by any officer or employee of the collector's office, without prompt discovery, is defective and is disapproved by this office, and hereafter in case of defalcations

under such faulty system, this office will hold that the collector has not exercised due diligence in the management of the affairs of his office.

Persons who receive and handle public funds in collector's offices should not be allowed to receive orders upon which moneys are paid into the office until the date of the receipt of the order is marked or stamped upon the face of it by another officer or employee of the office, except where the cashier does not handle stamps, in which case the cashier should mark or stamp upon the order the date of the receipt of the money for the stamps issued on said order.

Under no circumstances should the person who receives money for stamps to be imprinted, upon the requisitions of the collector, be placed in possession of the order for such stamps until it shall have passed through the hands of another officer or employee, and the date of the receipt of the same shall have been marked or stamped thereon. The requisitions of the collector for such stamps should be prepared for the signature of the collector and forwarded directly to the stamp agent upon whom the requisition is drawn by an officer or employee other than the person who receives the money for such stamps.

The above is a copy of Circular M. 99, dated December 21, 1899, furnished to collectors of internal revenue, and which it appears from recent reports received from accounting agents, is in some instances disregarded.

Collectors are now advised that on and after July 1, 1900, no collector's office will be graded No. 1 whose system is so defective as to permit the officer or employee who receives public money and issues stamps therefor to receive also the orders, requisitions, or papers direct from the taxpayer, on which stamps are issued or tax collected, thus enabling such officer or employee to withhold from deposit public funds and retain in his possession the order, requisition, or paper upon which the money is paid.

It is the purpose of this office to see that no opportunity is presented for irregularities in this respect, and to this end the prompt and unqualified support of collectors is expected.

G. W. WILSON, *Commissioner*.

(137.)

Livery hire—Modifying Circular No. 537.

(Amended by Circular 577, Decision No. 184.)

[Int. Rev. Circular No. 572.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 29, 1900.

To collectors of internal revenue:

It has been ascertained that in some localities deputy collectors are unable to procure livery for use in the discharge of official duties at the rate of \$1.50 per day. Collectors are therefore advised that so

much of Circular No. 537 as fixes a maximum rate of \$1.50 per day for horse and buggy is hereby revoked, and that hereafter charges for livery within the limits of the annual allowance at a rate not exceeding the prevailing rates in the locality where the livery is procured will be allowed. Collectors will, however, advise deputy collectors that they will be expected to secure the most reasonable terms, and that unnecessary charges for livery will not be allowed and must not be entered in their accounts in Form 63½.

The accounting agents of this office will examine the accounts (Form 63½) filed by deputy collectors, and will invite special attention to the accounts of officers who disregard the instructions of this office in this respect.

This office will not tolerate the employment or the retention in office of any person who by his conduct exhibits a lack of appreciation of the dignity of the service and the spirit and purpose of this office in the enforcement of the law and the protection of the interests of the Government by failure to observe strict economy and good business methods.

G. W. WILSON, *Commissioner*.

(184.)

Use of own conveyance by deputy collectors, etc.

(Int. Rev. Circular No. 577.—Further modifying Circular No. 537.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1900.

To collectors of internal revenue :

It has become apparent to this office that limiting, to \$1 per day, the amount to be charged by a division deputy collector for the use of his own horse and buggy for purposes of canvassing his division, is hardly equitable and calculated to compel the officer to resort to the hire of livery at a much greater cost.

Collectors are, therefore, advised that Circular 537 has been modified in this respect, and beginning with the month of August, 1900, division deputies who use their own horse and buggy will be allowed to charge at the rate of \$1.50 per day for such days or parts of days as the same is actually and necessarily used. Deputy collectors will be held to a strict account for these charges, and any irregularities in the same will call for summary dismissal from the Service. Collectors are especially enjoined to make careful examination of the expense accounts of their deputies to ascertain if any improper charges are made, and when discovered to report the facts to this office for such action as may be deemed proper.

Where street or trolley cars are available, such mode of conveyance should be used as far as practicable.

Where deputy collectors do not use their own horse and buggy, they will be permitted to hire livery, the charges for which must be reasonable and not above the usual commercial rates, such livery to be used only when absolutely necessary for the proper discharge of official duty.

In doing away with the limitation of expenses to be incurred for use of livery, or the deputy's own horse and buggy, mentioned in paragraphs 7 and 8, Circular 537, it must be understood that no expense will be allowed in excess of the annual allowance of the deputy.

The provisions of Circular 537, revised March 10, 1900, will remain in force, so far as the same are not modified by this circular and Circular 572.

G. W. WILSON, *Commissioner*.

(258.)

Accounts of gaugers, storekeeper-gaugers, and storekeepers.

[Int. Rev. Circular No. 587.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 15, 1900.

To collectors, gaugers, storekeeper-gaugers, and storekeepers:

The last appropriation act provided, in part, as follows:

Provided further, That the Commissioner of Internal Revenue is authorized to detail gaugers, storekeeper-gaugers, and storekeepers, appointed in one district, for special or regular duty in other districts, and the accounts of gaugers, storekeeper-gaugers, and storekeepers so detailed shall be adjusted and paid in the district where they were appointed the same as if assigned to regular duty, without regard to the number of districts in which they may have been employed in any one month, the same as if all their services had been performed and expenses incurred in the district in which appointed, and the order of the Commissioner of Internal Revenue transferring gaugers, storekeeper-gaugers, or storekeepers to special work shall be accepted by the accounting officers of the Treasury Department as full authority for proper expenses incurred by said gaugers, storekeeper-gaugers, or storekeepers, while so assigned.

This requires that gaugers (including special gaugers), storekeeper-gaugers, and storekeepers shall be paid in the district where appointed regardless of where the services were rendered, and in the future such officers performing services in another district than where appointed will send their Forms 107 or 150, as the case may be, to the collector for the district where they were appointed, who will pay their accounts.

Amounts which have been paid to these officers by the collector for the district in which the officers were not appointed have been disallowed by the Auditor for the Treasury Department. Collectors who have made such payments will be addressed further in regard to such disallowances in the near future.

ROBT. WILLIAMS, Jr., *Acting Commissioner*.

ASSESSMENTS.

(221.)

Instructions relative to receipting for assessment lists.

[Int. Rev. Circular No. 582.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 5, 1900.

To collectors of internal revenue:

1. Collectors in receipting for assessment lists (Form 23) for the month of October, 1900, and subsequent months, will use Form 23½, revised September 28, 1900, and Form 476, approved the same day.

To this end, the collector will make use of column 11 of the "duplicate" and "triplicate" of the Form 23 for October, by changing the heading so as to read as follows: "Advance collections for October, 1900." He will then enter in this column each amount in column 12 which appears by the date in column 13 to have been collected in October, the entry of each item in column 11 being on the same line as that on which it appeared in column 12. Care must be taken to *exclude* from column 11 of the October list *all items collected subsequently to October 31, and every tax shown to be paid by stamp.* (The same care must be taken in regard to all subsequent months.)

2. If there are two or more pages in the list the collector will carry the totals forward, in column 11, from page to page. He will also, in the same column, on the line next below the last line of the last page of the list on which an amount is reported for assessment, enter the total of Form 58, and immediately thereunder enter the total of all such collections, including the amount collected on Form 58, writing on the line of the total the words, "Total advance collections for October, 1900."

3. He will receipt for this amount in the first part of Form 476, prescribed September 28, 1900, and forward said form to this office with the list (Form 23) for that month.

4. If, upon comparison in this office, of the total of column 11 of the duplicate, Form 23, for October, with the amount stated in the first part of Form 476 for October, they are found to agree, the amount will be charged in the second part of Form 476 and forwarded to the proper accounting officer.

5. The amount certified in the first part of Form 23½ for the October list will be the total amount of the October list—*i. e.*, the amount of column 10, Form 23, with the amount on Form 58 included.

6. The amount thus certified should be receipted for in the second part of Form 23½, *less the amount of advance collections previously receipted for on Form 476.*

7. The proceedings as to all subsequent months will be the same as specified above, the advance collections for each month being charged

on Form 476 and the balance of the assessments for the month on Form 23½.

8. A special list for bankers will hereafter be a special list for June and will be forwarded on or before the 10th day of August with the regular list for July. The collections thereon made in June will be entered on Form 476 and sent with the regular list for June. The collections made thereon in July will be entered on Form 476 to be sent with the regular list for July. The total amount of the bankers' list for June will be certified to the collector in the first part of Form 23½ for the June bankers' list, and the collector will receipt for the said amount in the second part of Form 23½, less the advance collections on that list in June and July theretofore receipted for on Form 476. There will be two receipts on Form 476 for July, one for the regular list and one for the bankers' list, and, in case collections of bankers' taxes are made in June, there will be two Forms 476 for June also.

9. For convenience of reference in considering these instructions copies of Form 476 and the newly revised Form 23½ are subjoined.

FORM 476.—U. S. INTERNAL REVENUE.

Collector's receipt for taxes collected in advance of receipt of lists.

I hereby certify that I have received and deposited to the credit of the Treasurer of the United States the sum of \$——, collected in advance on list for the month of ——, 19——, as shown by my report on Form 51B. (Care must be taken that the advance collections agree with those reported on Form 51B.)

Dated at ——, this —— day of ——, 19——.

_____,
Collector ——— District of ——.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., —— 19——.

_____, collector, district of ——, is hereby charged with the amount receipted for as above stated, viz, —— dollars (\$——).

_____,
Commissioner of Internal Revenue.

FORM 23½.—(REVISED SEPTEMBER 28, 1900).—U. S. INTERNAL REVENUE.

Aggregate statement of taxes assessed and returned to collector. (To be executed in duplicate—one copy to be forwarded to the Commissioner of Internal Revenue; the other copy to be attached to the list, Form 23, filed in collector's office.)

I, _____, Commissioner of Internal Revenue, hereby certify that I have this day sent to _____, collector of the _____ district of _____, an alphabetical list of taxes payable within said district for the month of _____, 19——. The amount assessed in column 10, Form 23, is \$——, less amount receipted for on Form 476, dated _____, 19——, \$——, balance to be covered by the following receipt, \$——.

Dated _____, 19——.

_____,
Commissioner of Internal Revenue.

Collector's receipt.

I hereby acknowledge receipt from _____, Commissioner of Internal Revenue, the above-described list amounting to \$_____, less amount receipted for on Form 476, dated _____, 19—, \$_____. Amount of this receipt, \$_____.

Collector _____ District of _____.
Dated at _____, this _____ day of _____, 19—.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., _____, 19—.

_____, collector, district of _____, is hereby charged with the amount receipted for as above stated, viz, _____ dollars (\$_____).

_____,
Commissioner of Internal Revenue.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(250.)

Recommending assessment of taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 26, 1900.

To revenue agents :

Hereafter, when recommending assessment of taxes against parties, you will state sufficient facts to sustain the charge. If books have been examined, what they show should be stated, and any other evidence which tends to establish liability and upon which the recommendation is based should be reported.

Please notify persons under your direction to act accordingly, and you will not transmit their reports to this office until they are satisfactory in this respect.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

DISTILLED SPIRITS.

(16.)

Distilled spirits.

Change in method of accounting for "no proof" and "apparent proof" spirits at rectifying houses.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 13, 1900.

To collectors of internal revenue :

Hereafter, at rectifying houses, no entry will be made of proof gallons for spirits dumped as "no proof" or "apparent proof," but the proof

gallons in such cases will be marked and treated as "O" in column 18; on Form 122. The *wine gallons* will be entered in column 16 on said form, and in a separate account on Record 64.

Rectifiers who have dumped such spirits, in sending out similar spirits, will receive credit only in wine gallons in such separate account and only to the extent of the wine gallons dumped and so entered.

Where a rectifier manufactures "apparent proof" or "no proof" goods from unsweetened spirits, he will be credited as heretofore with the actual proof gallons contained in the wine gallons of such goods which he stamps out.

Printed circulars on this subject will be sent out at an early date.

G. W. WILSON, *Commissioner*.

(32.)

Case stamps for distilled spirits bottled in bond.

[Circular No. 11.—Int. Rev. No. 552.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 3, 1900.

To collectors of internal revenue and others concerned:

Case stamps for distilled spirits bottled in bond which the owner thereof was not able to use in the season for which they were imprinted may be changed and used in the manner hereinafter provided. The dates showing when "made" and when "bottled" on the attached strip stamps may be erased or obliterated by the use of bronze or other suitable material, and other data giving the correct date of production and bottling may be imprinted thereon. All of the work of erasing and imprinting as aforesaid shall be done at but one place in the district, to be designated by the collector. The imprinting shall conform, as nearly as practicable, in style of workmanship, type, and color of ink to the dates as originally imprinted on said stamps, and all the risk and expense incident thereto shall be borne by the distiller or owner using said stamps. Owners or distillers desiring to change and use stamps in the manner aforesaid shall notify the storekeeper and gauger in charge of the bottling warehouse, giving number and denomination of stamps required and data to be imprinted thereon, and the storekeeper, or storekeeper and gauger, shall at once deliver said stamps to the collector, with a statement showing the number, denomination, and serial numbers of the case stamps to be changed for use, the data to be imprinted thereon, and the name of the person or firm for whom said stamps are to be changed. The collector, on receipt of the stamps and statement, may issue an order for the imprinting of said stamps in the manner required, and may designate a printer, or other person, to take charge of and imprint the stamps, delivering the same to him, and taking his receipt therefor. When imprinted, the stamps shall be returned to and

examined by the collector, and, if found satisfactory, shall be delivered by him to the storekeeper, or storekeeper and gauger, for the use of the distiller or owner.

When case stamps are used under the foregoing provisions, the storekeeper, or storekeeper and gauger in charge, shall write across the stub of each stamp with ink the date when used and the date of production of the spirits as shown on the strip stamps, affixing his signature thereto.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary*.

(34.)

Increase in price of Alexander's improved wantage rod—Method of procuring and using the same.

[Int. Rev. Circular No. 553.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 6, 1900.

To collectors of internal revenue and others:

On account of increased cost of labor and materials, the contractor for furnishing Alexander's improved wantage rod has found it necessary to increase the price to \$1.60 each, which, until further notice, will be the price of the rod.

Applications for the rod must be addressed to the Commissioner of Internal Revenue, and at the same time the price stated above, in a money order or draft, must be forwarded to the Commercial and Farmers' National Bank, at Baltimore, Md., payable to the order of that bank. *In no instance must the remittance be sent to this office or be made payable to the Commissioner.*

The post-office address of the intending purchaser should be plainly indicated in the application, as the rod will be forwarded by mail, except when otherwise requested, in which case it will be sent by express at the expense of the applicant.

In using Alexander's improved wantage rod, the following instructions should be observed:

Take the wantage rod in the right hand, with the metal part resting entirely in the groove; place the lip against the under side of the bung stave; clasp the handle at the head of the metal part with the thumb and forefinger of the left hand; hold the rod in a perpendicular position, with the lip firmly against the under side of the bung stave; move the wood part of the rod downward, without jarring, into the cask, as far as the metal guides will permit; withdraw it at once to its former position; take the lip from the under side of the bung stave; by reading the wet line in the scale which shows the capacity of the cask the wantage will be determined. The graduation nearest the wet line should always be read. When the wet line is midway between graduations, the line which indicates the greater wantage should be taken.

To find the wantage of a cask which is less than half full, pull out the metal part as far as the guides will permit; secure it in that position by turning the eccentric button into the notch in the back of the metal rod; insert the entire rod into the cask until the foot of the wood part rests on the stave opposite the bung; withdraw it at once, and the wet line on the wet and dry inch column, counting from the bottom, will show the number of inches and tenths of inches of spirits in the cask. Take the same number of dry inches and tenths of inches, counting from the top in the same column; follow a parallel line with the eye from the number of dry inches thus found to the scale which contains the capacity of the cask; the figures thus found will indicate the number of gallons in the cask. This number deducted from the capacity will give the wantage.

When the rod is not in use the eccentric button should be turned over the head of the metal slide to retain the slide in place.

Collectors will furnish a copy of this circular to each gauging officer in their respective districts, and give the information herein contained as wide a publicity as possible, as any deviation from the above instructions will result in delay in filling orders.

G. W. WILSON, *Commissioner*.

(68.)

Regulations concerning marking, reporting, and accounting for sweetened spirits at rectifying houses.

[Int. Rev. Circular No. 556.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 9, 1900.

To collectors of internal revenue and others:

The following regulations in regard to marking, reporting, and accounting for sweetened spirits, entitled under the regulations to be regarded as "apparent proof" or "no proof," and which are rectified or compounded at rectifying houses, are hereby prescribed:

DEFINITION OF "APPARENT PROOF" OR "NO PROOF" SPIRITS.

As heretofore stated in Circular 529, spirits are entitled to be classed as "apparent proof" or "no proof" only when they contain saccharine matter or other material to such an extent that no indication is shown on the hydrometer stem; or when, although an incorrect indication is shown by the stem, the presence of saccharine matter in large proportions is unmistakably apparent. The fact that spirits marked or sold as whisky, rum, gin, brandy, etc., are alleged to contain, or do as a matter of fact contain, a percentage of saccharine matter will no longer entitle them to be classed as sweetened goods. Such spirits will be taken to be and will be treated precisely as unsweetened spirits, and their proof will be marked and reported according to the actual reading of the hydrometer stem.

Such cordials, liqueurs, and other compounds as are well known to contain a large proportion of saccharine matter will be marked and reported as "apparent proof" or "no proof," as the case may require, but this provision will be strictly confined to the artificial compounds, such as anisette, benedictine, blackberry cordial, prune juice, kummel, and similar goods, of which saccharine material is recognized as a large and necessary ingredient.

MARKING AND STAMPING SWEETENED SPIRITS WHEN MANUFACTURED.

Where a rectifier manufactures and puts up spirits entitled under the regulations to be regarded as "apparent proof" or "no proof," he will hereafter employ a separate Form 237 for giving notice of the completion of the process of rectification, and in addition to the particulars now required in such cases will also state the *actual proof* of the spirits at the end of the notice, over his signature.

The gauger, in addition to marking the "apparent proof" preceded by the letters "A. P." or the "0" indicating "no proof," as heretofore, will also mark by cutting or burning the *actual proof* as stated by the rectifier on the head of the package, preceded by the letters "Act. P.," and will cut the wine gallons and *actual proof gallons* on the bung stave. The letters "Act." will be written on the stamp before the words "Proof gallons," and the *actual proof gallons* will be entered in the appropriate space. No entry indicating that the spirits are "apparent proof" or "no proof" will be made on the stamp. If a change of package is subsequently made, the new stamp issued to cover the same must show the *actual proof* as stated on the slip taken from the original stamp. Occasional tests with a wine still will be made at the various houses where spirits of this class are manufactured, in order to verify the statement of the actual proof on Form 237 and insure accuracy in this respect.

Where a rectifier manufactures spirits of this class he will be credited in the regular account on Record 39 as heretofore with the wine gallons, and in the regular account on both Records 64 and 39 with the *actual proof gallons* contained in the wine gallons, of such spirits, which he stamps out as shown by the Form 237.

REPORTING AND ACCOUNTING FOR SWEETENED SPIRITS HEREAFTER PRODUCED.

Where packages of sweetened spirits hereafter produced, and which consequently have their actual proof and actual proof gallons marked as required above, are subsequently dumped for compounding or blending without admixture with sweetened goods whose proof is not known, the wine gallons of the spirits gauged for dumping as determined by the gauger will be entered in column 16, and the *actual proof gallons* as marked on the package will be entered in column 18 on the notice, Form 122, and the *actual proof* as marked on the package will be entered in column 17 preceded by the letters "Act. P." In such cases, the pro-

cedure when the spirits are stamped out will be similar to that prescribed above for the stamping out of sweetened spirits when originally manufactured.

REPORTING AND ACCOUNTING FOR SWEETENED SPIRITS HERETOFORE PRODUCED.

In giving notice of intention to dump packages of sweetened spirits heretofore produced, or which are mixed or blended with sweetened spirits heretofore produced, so that the actual proof and actual proof gallons of the product of rectification will not be known, the rectifier will employ a separate notice, Form 122. In such cases the gauger, in making return on Form 122, will enter the wine gallons contained in each package in column 16, "Net wine gallons," and the corresponding entry in column 18, "Proof gallons," will be "0." No value whatever will be given in the account of spirits dumped to the proof gallons or apparent proof gallons of such spirits, but the wine gallons thereof as shown by the footing of column 16 will be entered in a separate account to be kept on Records 64 and 39. A suitable space in said records to be headed "Account of sweetened spirits" will be adapted for this purpose. The entries in this account on the Record 64 will be made by the gauger who performs the gauge for dumping, and those on the Record 39 will be made in the collector's office, as in case of the regular account of unsweetened spirits.

In giving notice of completion of the process of rectification of such spirits, the rectifier will employ a separate Form 237. The wine gallons as shown by the footing of column 6, "Net wine gallon contents," on Form 237, will be carried to the "Account of sweetened spirits" on Records 64 and 39 and there credited against the wine gallons already charged therein. The rectifier will be permitted to stamp out spirits of this class to the extent of the balance of wine gallons previously dumped remaining to his credit as shown by the "Account of sweetened spirits," but the stamps in such cases will be issued for the wine gallons only and the stamps will be modified, and the marks applied in conformity with the regulations heretofore prevailing where "apparent proof" or "no proof" spirits are stamped out for rectification.

REDISTILLATION OF SWEETENED SPIRITS.

Where a rectifier dumps spirits entitled under the regulations to be regarded as "apparent proof" or "no proof" for the purpose of recovering unsweetened spirits therefrom by redistillation, he will give notice of his intention so to do on a separate Form 122, entering in the blank after the * in the first line of the notice the word "redistilling," so that it will read, "* * * I will empty for the purpose of redistilling. * * *" In such cases, the gauger, on receipt of the order on Form 122 to gauge the spirits, will proceed to the rectifying house, and there, by the use of the gauging rod, determine the wine gallons contents

of each barrel included in the notice. He will also, by the use of a wine still, determine the actual proof of the spirits gauged by him, and from the wine gallons and proof thus determined he will find the actual proof gallons by reference to Table No. 4 of the Gaugers' Manual.

Where two or more packages of sweetened goods, all of the same kind and quality, are covered by the same notice, it will not ordinarily be necessary for a separate determination of the proof of each package to be made. In such cases a small sample should be taken from each barrel and the samples thus procured thoroughly mixed, and a proper quantity of the mixture tested by the wine still. The result thus arrived at will be taken to be the proof of the contents of the several packages covered by the notice. The wine gallons will be entered in column 16 and the proof gallons in column 18 on the Form 122. The footings of these columns will be carried to the regular account, that of column 18 being entered on Records 64 and 39, and that of column 16 on Record 39. The wine stills and the apparatus pertaining thereto will be furnished by this office on requisition of the collector of the district for use at rectifying houses where unsweetened spirits are recovered from sweetened goods by redistillation. In determining the true per cent of proof by means of the wine still the following instructions will be observed :

Fill the cylinder to the upper mark with the liquid to be tested (having previously ascertained the temperature of the liquid); empty the measured liquid into the still, letting it drain as completely as possible; then fill the cylinder with one-half the original volume (the lower mark) with water and rinse it out, pouring the water into the still. Connect the cylinder with the tail of the condenser, using the cylinder to receive the distillate. Close the still and make all the connections tight and fill the condenser with cold water. If the water used for condensation is above 80° F., use ice to cool it. Keep the water circulating through the condenser during distillation. Light the alcohol lamp under the still, and continue the distillation until nearly the original volume taken has been collected in the receiver. Conduct the distillation at as low a temperature as possible, so as to avoid frothing or priming in the still. Too rapid distillation will involve the loss of alcohol by imperfect condensation. Put out the lamp, disconnect the receiver, and bring its contents exactly to the temperature noted when the cylinder was filled with the original liquid. When the liquid is at the noted temperature, add sufficient water at the same temperature to bring the volume exactly to the mark. Close the open end of the cylinder with the palm of the hand and invert the cylinder and its contents slowly four or five times in order to insure a thorough mixing of the liquid. Take the reading of the alcoholometer and thermometer, and correct the reading of the former for the observed temperature according to Table IV, in supplement No. 1 to series 7, No. 5, revised.

It should be borne in mind that the result thus arrived at represents the percentage of alcohol by volume, which must be multiplied by 2 in order to give the true per cent of proof.

GENERAL INSTRUCTIONS.

All regulations inconsistent with the foregoing are hereby modified accordingly.

Collectors will place a copy of this circular in the hands of each gauging officer and of each rectifier in their respective districts, and see that its requirements are strictly observed.

Officers should carefully study the whole circular in order to familiarize themselves with its provisions and requirements.

The wine still herein prescribed for use in certain cases is the same apparatus now employed under the regulations in the inspection of pure sweet wines fortified under the act of October 1, 1890. In districts where redistillation of sweetened spirits is practiced, collectors will immediately make requisition for such number of wine stills as may be necessary to supply the gaugers who are likely to need them, and will see that such gaugers qualify themselves to properly use the stills. In districts where the necessity for a wine still under these regulations is confined to an "occasional test" when sweetened spirits are manufactured, it is probable that one such still will suffice for the district, and requisition should be made accordingly.

G. W. WILSON, *Commissioner*.

(76.)

Excessive losses of distilled spirits in bonded warehouses.

[Int. Rev. Circular No. 557.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 19, 1900.

To collectors of internal revenue:

Section 4, act of May 28, 1880, provides:

If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package hereafter deposited in a distillery warehouse, other than the loss provided for in Section thirty-two hundred and twenty-one of the Revised Statutes of the United States, as amended, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired.

A like provision is made in section 58 of the act of August 28, 1894, as to spirits deposited in general bonded warehouses or in special bonded warehouses.

As the question of excessive leakage depends largely on the circumstances under which the loss occurs, no fixed rule can be established in such cases. In view, however, of the allowance for loss provided in section 50, act of August 28, 1894, and the amendatory act of March 3, 1899, any loss ascertained upon a regauge of a cask or package of a capacity of 40 or more wine gallons after the expiration of sixty-four months from date of original gauge, which exceeds 20 proof gallons or any loss found by such regauge of any cask or package of a capacity of less than 40 gallons which exceeds 12 proof gallons, will be regarded as excessive, and collectors will in all such cases immediately collect the tax due on the original contents of such cask or package less only the allowance authorized by law.

When a regauge is made of packages before the expiration of sixty-four months from the date of the original gauge, and the loss is found to be 50 per cent or more in excess of the minimum allowed by law for the time which has elapsed since the date of the original gauge, and is in excess of 10 proof gallons as to packages of a capacity of not less than 40 gallons, or of 6 proof gallons as to packages of less capacity than 40 gallons, the collector will at once report the fact, with all the circumstances and conditions surrounding the case, to the Commissioner of Internal Revenue.

The collector will also report to the Commissioner when the losses are smaller than those above specified where the condition of the warehouse, or the cooperage of the packages in the warehouse, is such as indicates a want of proper care on the part of the distiller in preventing unnecessary loss or wantage; or where the loss is of such extent as will materially affect the tax security afforded by the lien imposed by section 3251, Revised Statutes.

G. W. WILSON, *Commissioner*.

(77.)

Correct weighing and reporting of packages of distilled spirits by gauging officers at distilleries.

[Int. Rev. Circular No. 558.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1900.

To collectors of internal revenue and internal-revenue agents:

Reports received at this office disclose the fact that in some instances gaugers and storekeeper-gaugers, assigned to duty at distilleries where the weighing system is employed in determining the contents of casks and packages, are ignoring the regulations by disregarding the half pound in weighing them for the tare and gross weight of the packages.

Attention is called to the fact that where packages are correctly

weighed and reported about one-half of them will show half pounds and the remainder even pounds, and where reports reach this office or goods are found upon the market showing uniformly even pounds, it indicates one of two things, either that the gauger has resolved all fractions in favor of the distiller or that he has done so for the purpose of simplifying his calculations in making up his reports.

This practice wherever indulged in must be discontinued at once, and the correct tare and gross and net weight in pounds and half pounds ascertained and marked upon the packages and so reported on Form 59, as required by regulations.

Any gauger or storekeeper-gauger hereafter found disregarding these regulations will be promptly suspended upon the charge of dereliction of duty, and, if found guilty of the charge, recommended for dismissal from the Service.

G. W. WILSON, *Commissioner*.

(87.)

Preparation of distillers' annual notices and bonds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 4, 1900.

To collectors of internal revenue:

You are instructed that it will be necessary for distillers who desire to continue business after the 30th instant to give new notices and execute new bonds. These papers should be prepared and submitted a sufficient time in advance of the 1st of May to enable you to approve the bonds on that day. In no case should a bond intended for the new year be approved before May 1.

You will call attention to appropriate portions of the regulations and give such directions as will facilitate the correct preparation and execution of these annual notices and bonds, and when received in your office they should be carefully and critically examined before they are approved and copies forwarded to this office.

The fact should not be overlooked that collectors are empowered to refuse to approve distillers' bonds in certain cases.

Where distilleries are under suspension and so continue on and after the date of the approval of the new bonds, notices of continued suspension, bearing even date with the approval of the bonds, must be filed.

Your attention is also called to office letter dated April 4, 1899, relative to distillers' annual notices and bonds.

G. W. WILSON, *Commissioner*.

(89.)

Spirits lost by casualty.

Loss of spirits from leakage through wormholes not a casualty.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 5, 1900.

SIR: The claim of Terry & Blankenship, of Elk Valley, for the refunding of \$50.16 paid as stamp tax on spirits alleged to have been lost by casualty, having been submitted to the honorable the Secretary of the Treasury for his action under section 3221, Revised Statutes, has been returned by him disallowed.

The loss is alleged to have resulted from leakage through wormholes. This is not a casualty as defined by the honorable the Secretary of the Treasury in his letter of May 25, 1894, published in Internal Revenue Record, volume 40, page 173.

Please notify the claimants of the rejection of the claim.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. A. J. TYLER, *Collector Second District, Knoxville, Tenn.*

(163.)

Collection of tax on fruit brandy.

[Circular No. 99.—Int. Rev. No. 575.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 26, 1900.

To collectors of internal revenue:

In order to secure a close and effective supervision of the operations of fruit distilleries, collectors are instructed to give prompt attention to all notices and bonds, that distillers may suffer no delay in beginning work, nor have pretext for commencing work before they are notified of the approval of their papers.

The notices and bonds must be given on Forms 27½ and 30½, revised June 26, 1896, and should be carefully scrutinized to see that they are prepared and executed in strict compliance with regulations and the instructions printed thereon. The former must give the location of the distillery with particularity and certainty, and contain a particular description of the room or building on the distillery premises to be used as a designated place of deposit of the brandy produced.

In the bonds the location of the distillery must be correctly and accurately given. If the distillery is located in a village, town, or city, the blank should be filled out as printed, but if otherwise, the distillery should be described as near the nearest village, town, or city, or post-office.

It has been found that in some cases the actual owners and operators of a distillery have procured some person to give the notice and bond who is in no way interested in the operation of the distillery. The deputy collector who takes the notice and bond should at the time of taking the same satisfy himself that the person tendering the notice and bond is the sole owner and proprietor and the only person interested in the distillery. An additional statement should also be made on the affidavit Form 33 that the surety is in no way interested in the distillery, or in the operation or products thereof, and that he believes that the principal on the bond is the real owner and proprietor.

Record No. 25½ must be written up daily to show all the transactions, opposite the appropriate dates, as to materials purchased or received, operations, and sales or removals of brandy, the latter to be made even though the sales or removals are made after the close of operations at the distillery. The hour of commencing work, when boiling is by furnace heat, is the hour of lighting the fire, and when boiling is by steam the hour when the steam is applied; and the hour of closing work in either case is the hour when brandy or singlings cease to run; and the time must be so entered on the record.

Distillers should be notified that they are required to make a return to the collector in duplicate on Form 15 on or before the 10th day of each month, and that they will be expected to pay the tax on, or to warehouse, the product of each month; and that all singlings must be doubled and ready for gauging by or before the end of the month; otherwise singlings will be liable to be taxed as brandy.

Collectors will, before the commencement of operations for the season, direct the deputy collectors to make a thorough canvass of the fruit distilleries in their respective divisions, with instructions that they take an accurate account of all fruit brandy either at the distillery or at the distiller's place of business, as wholesale or retail liquor dealer, if he carries on either business. Form 183 may be adapted for the purpose of this inventory, and a report thereon should be made to the collector in duplicate, who will file one in his office and forward one to the revenue agent in charge of the division. Each package should be fully described, with its location and original and actual contents.

When making this canvass deputy collectors will also ascertain whether or not the distiller has in his possession any stamps for fruit brandy issued to him or to any other distiller, and note the fact on the report, with a description of the stamps, if any are found.

Collectors will also instruct their deputies when making this canvass to ascertain whether the distillers have been supplied with copies of supplement No. 1, to series 7, No. 7, revised February 19, 1895, and if not, to deliver a copy to each distiller who has not been supplied, taking his receipt therefor on Form 163, which will be forwarded to the collector.

Collectors will also direct the officer who visits the distillery to make the final gauge of brandy after the close of operations, to make a careful

examination of the distillers' records, and ascertain and report on Form 192 whether the distiller has distilled all the materials received by him during the season, and if any has been destroyed, or any remains on hand at the time of the final examination, to note the kind and quantity, and, if on hand, its condition and the reason why it has not been distilled.

To effect a frequent visitation of distilleries, collectors will, when necessary, lay off their districts into suitable divisions, and arrange for a force of competent officers sufficient to thoroughly effect the purpose of maintaining such a supervision of these distilleries as shall afford the distiller every facility for compliance with the law and shall limit the opportunities for its evasion. The visits should be at least four in number in each month during the period of *active operations*, each successive visit to be made, so far as practicable, by a different officer, and not less than two of the visits to be made by a gauger, who shall gauge all ungaged brandy found at the distillery, and in season to facilitate the distiller's monthly report.

Gaugers should not be employed in this service until the distilleries have actually begun operations.

Form 192, revised, will be used for reporting these visits, and the statements therein should be made with care and particularity, and in accordance with the instructions printed upon the form; as also should be the inventory of all the brandy upon the premises, which must be made upon Form 59† by the first visiting officer.

The first visiting officer will ascertain the cubic contents of each fermenter, and mark or cut thereon a serial number, beginning with number one, and cubic contents, and these capacities should be verified from time to time by other officers.

The officer who nexts visits the distillery, after any additional fermenters have been brought on the premises, will ascertain the cubic contents of each of such additional fermenters and mark on each its serial number and cubic contents.

The reports on Form 192 should, immediately upon their receipt by the collector and revenue agent, be examined, and if errors or omissions are found in the statement they should be returned to the officers who made the examination for correction.

To facilitate the comparisons between Forms 192 and the distillers' returns if collectors so desire, they may adopt a blank book for the entry of the essential facts reported.

When pomace or other materials for any reason become unfit for distillation and the distiller desires to destroy the same, the collector will, upon his application, direct the deputy to visit the distillery, whenever practicable, and if he finds the materials unfit for use he will have the same destroyed under his supervision and note the fact on the distiller's record, and also certify thereto on Form 192.

In like manner, when leakage of cider is claimed the visiting officer

should verify the claim by an examination of the tub from which leakage is alleged to have occurred, and from other circumstances, and note the facts on the distiller's record and certify thereto on Form 192.

Upon receipt of the distiller's return, Form 15, for any month, the several statements on Form 192 for that month should be carefully examined and summerized, and compared with the distiller's return, and if then, or at the close of the season's operations, it shall be found that the distiller has received on his premises materials which have not been accounted for, or has used materials which have not been reported as used, it may be assumed that brandy has been produced from the materials used and not reported, or received and not accounted for, and that such brandy has not been reported.

The quantity of brandy produced from such materials and not reported should, if possible, be determined from all the evidence that can be obtained. If, however, the quantity actually produced can not be thus determined, the production should be estimated upon the basis of the survey for the materials found to have been so received or used. This estimate of production from the materials fraudulently used should be at the rate of not less than 1 gallon of brandy from the number of gallons of such materials which under the survey will produce a gallon of brandy.

If it is found that all the materials received have been accounted for and all the materials used have been reported used, but that the distiller has not accounted for all the brandy produced, the quantity actually produced should, if possible, be determined from all the evidence that can be obtained. If, however, the actual production can not be thus determined, it should be estimated from the entire quantity of materials reported used upon the basis of the survey as above provided in case of materials fraudulently used.

The facts in either of the above cases, together with the estimates, will be reported to this office with a view to assessment.

The evidence that brandy has been produced from materials reported used, and has not been accounted for by the distiller, should be direct and positive; and a fraudulent removal of brandy can not be assumed from the mere fact that the quantity of brandy reported is not equal to that number of gallons which the materials reported used will under the survey produce.

Collectors will not report for assessment on Lists Form 23 "stamp-tax brandy" apparently due from fruit distillers on reports of revenue agents or special examining officers until the fruit distiller is notified of such proposed assessment, nor until the question of the liability of the distiller under section 3309, Revised Statutes, has been determined.

If, after the determination of the liability under section 3309, Revised Statutes, and after notifying the distiller, no explanation is received from him within thirty days thereafter, the collector will report the

amount found due for assessment on Form 23 with note in column 7 thereof, "No explanation received."

If the distiller can by affidavit show to the satisfaction of the collector that such assessment ought not to be made, the collector will forward all the papers, with his recommendation in the matter to this office with Form 23, and note in column 7 of that form, "Evidence herewith."

The reports showing the condition of fruit distilleries will be made in duplicate on Form 192, revised, exclusively, and one copy will be furnished to the collector and one to the revenue agent in charge of the division.

The employment of special officers, *including gaugers*, should cease at the close of active operations in each district, and not later than December 1, unless specially authorized for a further period.

Much depends on the efficiency of examining officers and the care exercised by them in performing their work. If it should appear that any officer has failed to make a thorough and complete examination of any distillery and a report on Form 192 in accordance with the instructions thereon, such dereliction of duty, when reported, shall be deemed sufficient cause for the removal of such officer.

Collectors will be held responsible for a prompt and vigorous execution of the work proposed.

G. W. WILSON, *Commissioner*.

Approved :

O. L. SPAULDING, *Acting Secretary of the Treasury*.

(240.)

Transportation and exportation of distilled spirits in bond without payment of tax under the internal-revenue laws.

[No. 4, revised November 9, 1900.—Supplement No. 2.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1900.

Regulations, series 7, No. 4, revised January 15, 1899, are hereby modified as to the exportation of distilled spirits in bond under the provisions of section 3330 of the Revised Statutes, as follows :

The period within which distilled spirits shall be delivered at the domestic port in case the spirits are withdrawn for export under a through bond (B) is hereby extended to sixty days. Within fifteen days from the date of such delivery at the port of export the spirits must be placed on board ship (or cars) en route to the foreign port named in the bond or to some other port without the jurisdiction of the United States.

Upon arrival of a consignment of distilled spirits at the port of export, the owner or exporter shall designate the customs bonded ware-

house which shall receive the spirits which are not to be immediately exported. A consignment may, at the port of entry, be divided into lots not to exceed ten within the time to be prescribed in the bond (B). But none of the divisions shall consist of spirits shipped to the domestic port under more than one through export bond (B).

Where the taxable contents of any one of the divisions of a consignment to be exported under one bond (B) does not exceed 91.80 proof gallons in case of bottled distilled spirits, or 91 taxable gallons in case of the distiller's original packages, the landing certificate heretofore required will not be exacted, but a certificate under the hand and seal of the foreign customs officer, or where there is no such officer, the affidavit of the foreign consignee taken before some official having power to administer oaths and having an official seal, will be accepted as proof of landing abroad. This provision is extended to every outstanding bond covering bottled spirits where the quantity, as above, does not exceed 91.80 proof gallons, or covering distiller's original packages where the quantity does not exceed 91 taxable gallons.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary of the Treasury*.

(249.)

Transportation and exportation of distilled spirits in bond without payment of tax under the internal-revenue laws.

[No. 4, revised November 9, 1900.—Supplement No. 2.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 26, 1900.

To collectors of internal revenue:

Your attention is called to a change in the second paragraph of Treasury decision 240, dated November 9, 1900, and reprinted below.

ROBT. WILLIAMS, Jr., *Acting Commissioner*.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1900.

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G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary*.

(254.)

Distilled spirits.

Form of certificate of foreign customs officer, and of affidavit of foreign consignee, covering landing of exported spirits where quantity does not exceed 91.80 proof gallons bottled spirits, or 91 taxable gallons in case of distillers original packages.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 7, 1900.

SIR: The Peacock Distillery Company in letter of 3d instant asks for a copy of the form to be used for the certificate of the foreign customs officer, or affidavit of the foreign consignee mentioned in the last paragraph of No. 4, revised November 9, 1900, Supplement No. 2.

The applicant having been referred to you for reply, you are informed that the following certificate, or affidavit, as the case may require, may be used, viz:

Certificate of foreign customs officer.

PORT OF _____,
_____, 190-.

I, _____, do hereby certify that the goods (or merchandise) hereinafter described, imported into this country (or province) from _____, by the _____ (here give name of vessel), were landed at this port and duly entered at the custom-house at this port, on the _____ day of _____, 190-, and that the duties imposed by the law in

force in this country (or province) upon said goods have been paid, or secured to be paid.

Marks.	Numbers.	Description of goods.	Date when entered.

In witness whereof, I have hereunto set my hand and seal of office, this — of —, 190—.

[SEAL.]

_____,
Collector or Chief Revenue Officer.

Affidavit of foreign consignee.

I, _____, of the _____ of _____, merchant, do hereby certify that the goods or merchandise hereinafter described have been landed in this _____ (city, town, or port) between the _____ and _____ days of _____, from on board the _____ of _____, viz :

Marks.	Numbers.	Description of goods.	Date when landed.

Which goods, according to the bills of lading for the same, were shipped on board the _____ at the port of _____, in the United States of America, on or about the _____ day of _____, and consigned to (me or to us) by _____ of _____, exporter.

_____,
Consignee.

Sworn to and subscribed at the _____ of _____ before me this _____ day of _____, 190—.

[SEAL.]

The foregoing certificate, or affidavit where there is no foreign customs officer, will be accepted in lieu of those heretofore required by series 7, No. 4, revised, only in cases where the quantity of spirits does not exceed 91.80 proof gallons in case of bottled spirits, or 91 taxable gallons in case of distillers' original packages.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. S. J. ROBERTS, *Collector Seventh District, Lexington, Ky.*

FERMENTED LIQUOR.

(144.)

Tax on fermented liquors.

Opinion of the Attorney-General—Upon the question of the rate of tax on beer in storage June 14, 1898, it is held that the rate was \$1.85 per barrel and not \$2.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 4, 1900.

To collectors of internal revenue and others concerned:

The appended opinion of the United States Attorney-General, relating to the question of the rate of tax on fermented liquors, is published for the information of internal-revenue officers and others concerned.

G. W. WILSON, *Commissioner.*

DEPARTMENT OF JUSTICE, *Washington, D. C., June 2, 1900.*
THE SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge receipt of yours of March 12, 1900, in which you resubmit the following question (which was set out in yours of March 13, 1899), and ask my opinion:

“Is the tax upon fermented liquors, bearing the old \$1 stamp, which were removed from the brewery on June 14 without the new \$2 stamp, owing to the failure of the Government to furnish same, a tax of \$2 per barrel, or of \$1.85, or of 85 cents?”

The law as it existed (section 3339, Revised Statutes) before the act of June 13, 1898, known as the war-revenue act, went into effect, levied upon every barrel of lager beer containing 31 gallons or less a tax of \$1, which was paid by stamp. The first section of the war-revenue act is as follows:

“That there shall be paid, in lieu of the tax of one dollar now imposed by law, a tax of two dollars on all beer, lager beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly: *Provided*, That a discount of seven and one-half per centum shall be allowed upon all sales by collectors to brewers of the stamps provided for the payment of said tax: *Provided, further*, That the additional tax imposed in this section on all fermented liquors stored in warehouse to which a stamp had been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamps.”

In the outset, by the provisions of this section, a tax of \$2, in lieu of the then-existing tax of \$1 per barrel, is levied upon each barrel of lager beer and other fermented liquors brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale within

the United States. If the lawmakers had stopped here, there could be no doubt that the tax had been increased from \$1 to \$2 per barrel.

But they go further and provide "that a discount of seven and one-half per centum shall be allowed upon all sales by collectors to brewers of the stamps provided for the payment of said tax." In other words, the collectors are required by the law to sell to the brewer the \$2 worth of stamps necessary to pay the tax upon a 31-gallon barrel of beer for \$1.85; and, although the stamps, when affixed to the barrel of beer, indicate a tax of \$2, yet, in fact, the taxpayer has only paid and the Government has only received \$1.85 therefor. And it can not be otherwise, for the tax has to be paid by stamps provided by the Government, and the law says that upon such stamps, when sold by the authorized agents of the Government, there must be allowed to the taxpayer who purchases them a discount of 7½ per cent.

Under section 3339, as before stated, the tax was \$1 per barrel, and this was without discount to the taxpayer. Therefore, to purchase the stamps required upon a barrel under the new law requires 85 cents in addition to the amount which was required to purchase the stamps before the latter law went into effect.

It appears that at the time the war-revenue act became operative some of the brewers or manufacturers had in their warehouses barrels of beer upon which they had already paid the tax of \$1 and had affixed the stamps necessary to denote such payment; and now the question arises as to what should be the amount of assessment for additional tax upon barrels of beer found in this situation.

It will be observed that the last proviso of section 1, above quoted, directs that the additional tax imposed on all fermented liquors stored in warehouse to which a stamp had been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamps. When the method of collecting the additional tax upon beer for which the existing tax of \$1 had already been paid was prescribed by Congress in the above provision, it was no doubt in contemplation of the fact that the increase in the tax was 85 cents per barrel, and to require the purchase of stamps for the payment of such additional tax would have levied a greater rate upon beer of this class than upon beer which was to be wholly tax-paid under the new law. The brewer had already paid a tax of \$1 per barrel; and then, to buy another \$1 stamp under the new régime, less the 7½ per cent discount, would cost him 92½ cents, thus making his tax upon his barrel of beer \$1.92½, when the tax upon others under the new law was only \$1.85. The plan of collecting by assessment, therefore, the additional tax upon beer which had already paid the anterior tax was adopted in order that the tax might be uniform upon all beer going upon the market at the same time.

It is stated by the Commissioner of Internal Revenue in his letter inclosed with yours that owing to the failure of the Government to furnish the stamps which became necessary under the new law for use upon barrels of beer, certain of the brewers who had already paid the \$1 tax were permitted by the Government to attach to each barrel another \$1 stamp of the old series, which stamp cost the brewer \$1, having been sold to him without discount. In such case it is evident that the Government received \$1 tax, when under the law it was entitled to receive only 85 cents. There is no express authority for the use of the old stamps to pay the additional tax upon beer already tax-paid at the rate of \$1 per barrel found in the warehouses when the new tax went into effect, for the provision in section 1 quoted is that this tax

shall be assessed and collected in the manner provided by law for the collection of taxes not paid by stamps. So these old stamps could not have been used by the brewers under the new law without the consent of the collecting officers of the Government; these officers must have induced, or at least permitted, the use of such stamps; otherwise the barrels of beer to which they were attached would have gone upon the market liable to seizure because of being improperly stamped.

It seems to me, under such circumstances, that it would be applying a very harsh rule to hold that, by reason of the failure of the Government to provide suitable stamps, and by permitting the use of other stamps, the taxpayer should be the sufferer and should bear the burden of 15 cents more on each barrel of his beer than by law he was required to pay.

I, therefore, advise you that under the war-revenue act the whole tax upon a barrel of not more than 31 gallons of beer, lager beer, ale, porter, and other similar fermented liquors, is not \$2, but \$1.85, to be paid by stamps attached to the barrel, though under the law the stamp or stamps attached to such barrel indicate the tax to be \$2.

I am further of the opinion that in all cases where the collecting officers of the United States have collected, by stamp, assessment, or otherwise, more than 85 cents per barrel additional upon beer which had theretofore paid the \$1 tax, whatever sum so collected over and above 85 cents per barrel was erroneous.

Respectfully, JAS. E. BOYD, *Assistant Attorney-General*.
Approved: JOHN W. GRIGGS, *Attorney-General*.

(175.)

Discount on beer stamps.

The decision of the United States circuit court of appeals for the seventh circuit, in the case of *Coyne, Collector, v. Manhattan Brewing Company*, accepted as final.—The act of July 24, 1897 (30 Stat., 206), which repealed the provision of section 3341, Revised Statutes, that the Commissioner of Internal Revenue should allow upon all sales of beer stamps to any brewer, and by him used in his business, a deduction of 7½ per cent, did not affect the taxpaying value of stamps purchased before it went into effect, and upon which the deduction was allowed, but which were not used until after it went into effect.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 7, 1900.

SIR: Your letter of the 16th ultimo, reporting that the court of appeals had affirmed the decision of Judge Kohlsaat in the case of *Coyne, Collector, v. Manhattan Brewing Company*, was duly received.

There have been a number of suits which have been instituted against collectors, in which the same question is involved as in this case. Section 3341, Revised Statutes, provided that—

The Commissioner of Internal Revenue shall allow upon all sales of such stamps [for the tax on fermented liquors] to any brewer, and by him used in his business, a deduction of seven and one-half per cent.

The internal-revenue collector, pursuant to the uniform practice, sold stamps to the plaintiffs, who were brewers, and upon such sales, and at the times thereof, allowed a deduction of 7½ per cent. These stamps,

although purchased before for use, were not actually used in payment of taxes until after the Dingley Act took effect, which act omitted, and thereby repealed, the previous statutory direction for the allowance of the deduction above stated.

Your attention is called to the decision in the case of the Nassau Brewing Company *v.* Moore, Collector (97 Fed. Rep., 206), and that of the Gerst Brewing Company *v.* Nunn (99 Fed. Rep., 939).

All the cases which have been tried, both in the circuit court and in the circuit court of appeals, have been decided against the Government. The court, in the case of the Nassau Brewing Company *v.* Moore, Collector, said :

When the Government of the United States, following the practice observed by it for many years, sold at a deduction of 7½ per cent a stamp of the denomination of \$1, and assured the purchaser that the stamp was worth a whole dollar for the purpose of paying taxes, such stamp should have a taxpaying power equal to the highest obligation issued by the Government ; and if, after such sale, the purchaser used the stamp in his business, he should be deemed to have fulfilled every obligation resting upon him, and to have perfected the right initiated by his purchase.

This office has decided not to contest the matter any further, but will accept the decision of the court in the case of Coyne, Collector, *v.* Manhattan Brewing Company. Please notify the plaintiff that the claim will be paid if presented in the proper form through the collector of internal revenue.

The other suits in the United States circuit court, in your district, against Collector Coyne, in which the same question is involved, will be disposed of in the same manner—that is, the claims for refund will be adjusted on the basis of the decision in the case above-mentioned.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. S. H. BETHEA, *United States Attorney, Chicago, Ill.*

HAWAII.

(120.)

Exportations to Hawaii of articles subject to internal-revenue tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 5, 1900.

To collectors of internal revenue :

From and after June 14, 1900, the following articles manufactured or produced in the United States can not be exported to the Territory of Hawaii in bond without the payment of tax, nor with the benefit of drawback as heretofore, viz, distilled spirits, stills, and worms ; tobacco, snuff, cigars, and cigarettes ; fermented liquors ; playing cards ;

oleomargarine; mixed flour; proprietary articles; medicines, bottled wine, and all other products named in Schedule B of the war-revenue act of June 13, 1898.

G. W. WILSON, *Commissioner*.

(125.)

Exports to Hawaii.

Date of sailing of vessel to be regarded as date of exportation of domestic articles exported to Hawaiian Territory prior to June 14, 1900.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 12, 1900.

SIR: I am in receipt of your letter of the 9th instant, in reference to the shipment of tobacco to Hawaiian ports from and after June 14, 1900, the date on which the act of Congress, entitled "An Act To provide a government for the Territory of Hawaii," takes effect.

In reply to your inquiry whether the published decision of this office of the 5th instant, that articles subject to internal-revenue tax can not be exported to Hawaii in bond, or with benefit of drawback, from and after June 14, 1900, applies to tobacco bonded for export prior to, but in transit in this country after, that date, you are informed that, in the case of *Simpson et al. v. Peaslee* (20 How., 571), the date of sailing of the vessel was held to be the date of exportation, and that the same rule for determining the actual date of exportation will apply to shipments under internal-revenue laws, and, as will be seen, without reference to the date of bonding or removing the goods for export.

With reference to the decision of May 5, referred to, I would state that in accordance with the opinion of the honorable Attorney-General of July 22, 1898 (embodied in T. D. 19783), the Hawaiian Islands, since their annexation to the United States (July, 1898), have been regarded, so far as our *commercial* relations are concerned, as foreign territory, and that they will be so regarded until the act named, which extends the laws of the United States (so far as applicable to these islands), takes effect.

On and after that date, articles produced in or shipped to the Territory of Hawaii will be subject to the same internal-revenue taxes as are imposed on like articles produced or sold in any other portion of the United States.

Respectfully,
Mr. W. H. HANCOCK, *Richmond, Va.*

G. W. WILSON, *Commissioner*.

(157.)

Collection district of Hawaii.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1900.

To collectors of internal revenue:

Under section 87 of the act of April 30, 1900, a new internal-revenue district, comprising the Territory of Hawaii, and to be known as the District of Hawaii, is constituted, to take effect from and including this date, with headquarters at Honolulu.

Pending the qualification of the collector appointed for said district, the office and district will be in charge of Deputy Collector Robert N. Frick, who has been designated as deputy collector in charge of the District of Hawaii.

G. W. WILSON, *Commissioner.*

LEGACIES AND DISTRIBUTIVE SHARES.

(7.)

Legacy tax.

A bequest to a priest for the purpose of paying for masses not exempt from legacy law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 6, 1900.

SIR: In reply to a letter addressed to this office by Mr. M. J. Howley, of Cairo, Ill., under date of the 12th ultimo, who has to-day been referred to you, asking whether or not a bequest of a sum of money to a priest for the purpose of paying for masses is liable to legacy tax, you will please advise him in the affirmative.

Paragraph 5, section 29 of the act of June 13, 1898, contains only one provision of the subject of exemption from legacy tax, namely, legacies to a husband or a wife.

Respectfully,
Mr. WILLIAM H. POWELL,
Collector Thirteenth District, East St. Louis, Ill.

G. W. WILSON, *Commissioner.*

(129.)

Legacy tax—Opinions of the United States Supreme Court.

The act of June 13, 1898, declared constitutional. The tax is not direct within the meaning of the Constitution, but, on the contrary, is a duty or excise. The uniformity clause of the Constitution relates only to geographical uniformity.

The phrase "whole amount of such personal property as aforesaid" relates to the sum of each legacy or distributive share considered separately. Legacies not exceeding \$10,000 are not taxed. The rate of tax is progressively increased by the amount of each separate legacy or distributive share, and not by the whole amount of the personal estate of the deceased from which the legacies or distributive shares were derived.

The proposition that bonds of the United States and the income therefrom are not lawfully taxable under an inheritance-tax law of the United States, because exempted by contract from such tax, has been decided not to be well founded, in the case of *Murdock, executor, v. John G. Ward, collector*.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 15, 1900.

To collectors of internal revenue and others concerned:

The following opinions of the United States Supreme Court, relating to the constitutionality of the internal-revenue legacy-tax law, etc., are published for the information of internal-revenue officers and others concerned.

G. W. WILSON, *Commissioner*.

SUPREME COURT OF THE UNITED STATES.—No. 387.—OCTOBER TERM,
1899.

Eben J. Knowlton and Thomas A. Buffum, Executors of the Last Will and Testament of Edwin F. Knowlton, Deceased, Plaintiffs in Error, v. Frank E. Moore, United States Collector of Internal Revenue, First Collection District, State of New York.

In error to the circuit court of the United States for the eastern district of New York.

[May 14, 1900.]

Mr. Justice WHITE delivered the opinion of the court.

The act of Congress of June, 1898, which is usually spoken of as the war-revenue act (30 Stat., 448), imposes various stamp duties and other taxes. Sections 29 and 30 of the statute, which are therein prefaced by the heading "Legacies and Distributive Shares of Personal Property," provide for the assessment and collection of the particular taxes which are described in the sections in question. To determine the issues which arise on this record it is necessary to decide whether the taxes imposed are void because repugnant to the Constitution of the United States, and if they be valid, to ascertain and define their true import.

The controversy was thus engendered: Edwin F. Knowlton died in October, 1898, in the borough of Brooklyn, State of New York, where he was domiciled. His will was probated, and the executors named therein were duly qualified. As a preliminary to the assessment of the taxes imposed by the provisions of the statute, the collector of internal

revenue demanded of the executors that they make a return showing the amount of the personal estate of the deceased, and disclosing the legatees and distributees thereof. The executors, asserting that they were not obliged to make the return because of the unconstitutionality of sections 29 and 30 of the statute, nevertheless complied, under protest. The report disclosed that the personal estate was appraised at \$2,624,029.63, and afforded full information as to those entitled to take the same. The amount of the tax assessed was the sum of \$43,084.67. This was reached according to the computation shown in the table which is printed in the margin. (a)

a Names of persons entitled to beneficial interest in said property.	Relation-ship of beneficiary to persons who died possessed.	Clear value of legacy.	Amount tax-able.	Rate for every \$100.	Amount of tax.
Mary, Countess von Francken Sierstorpff.. Furniture..... \$1,065.00 Cash legacy..... 100,000.00 Income for life on residuary estate, amounting to \$2,348,734.67. Countess Sierstorpff became 28 years of age on July 2, 1898. Present value of her life interest in said residuary estate, estimated according to United States tables, is 1,630,931.35 Total	Daughter				
		\$1,731,996.35	\$1,731,996.35	\$2.25	\$38,969.92
George W. Knowlton.....	Brother....	100.00	100.00	2.25	2.25
Charlotte A. Batchelor	Sister.....	5,000.00	5,000.00	2.25	112.50
Eben J. Knowlton.....	Brother....	100,000.00	100,000.00	2.25	2,250.00
Unitarian Church of West Upton, Mass....	None	5,000.00	5,000.00	15.00	750.00
The remainder of said residuary estate is subject to contingencies, and the individuals who will ultimately become entitled to the same on their degree of relationship to the testator can not be determined until after the termination of two lives now in being. The present value of the said remainder of said residuary estate, estimated as aforesaid, is \$:17,803.30.....		717,803.30			
Total		2,559,899.65	1,842,096.35		42,084.67

It is apparent from the table that the collector, whilst levying the tax on the legacies and distributive shares, or the right to receive the same, yet, for the purpose of fixing the rate of the tax, took into view the whole of the personal estate of the deceased—that is, whilst the tax was laid upon the legacies, the rate thereof was fixed by a separate and distinct right or thing, the entire personal estate of the deceased. The executors protested against the entire tax, and also as to the method by which it was assessed. The grounds of the protest were as follows:

“1. The provisions of the act of Congress under which it is sought to impose, assess, and collect the said tax or duty are in violation of the provisions of Article I, sections 8 and 9, of the Constitution of the United States, and are therefore void.

“2. The legacies to George W. Knowlton, Charlotte A. Batchelor, the Unitarian Church of West Upton, Mass., each amount to less than \$10,000, and are not subject to any tax or duty under the said provisions of the said act of Congress, even if such provisions be not unconstitutional and void.

“3. The legacy to Eben J. Knowlton, a brother of the testator, amounts to only \$100,000, and under the said provisions of the said act should

be taxed at the rate of \$1.12½ per \$100, and not at the rate of \$2.25 per \$100, even if said act be not unconstitutional and void."

Demand having been made by the collector for the payment, accompanied with a threat to distrain in case of refusal, the tax was paid under written protest, which repeated the grounds above stated. In the receipt given it was recited that the tax had been paid under protest to avoid the use of compulsory process. A petition for refunding was subsequently presented by the executors, in which the grounds of the protest were reiterated. The Commissioner of Internal Revenue having made an adverse ruling, the present suit was commenced to recover the amount paid. The facts as to the assessment and collection of the taxes were averred, and the refusal of the Internal Revenue Commissioner to refund was alleged. The petition for refunding was made a part of the pleadings. The right to repayment was based upon the averment that the sections of the statute, under authority of which the amount had been assessed and collected, were unconstitutional. The circuit court sustained a demurrer, on the ground that no cause of action was alleged. The claim was rejected, and the suit was dismissed with costs.

The questions which arise on this writ of error, to review the judgment of the circuit court, are fourfold: "First, that the taxes should have been refunded because they were direct taxes, and not being apportioned were hence repugnant to Article I, section 8, of the Constitution of the United States; second, if the taxes were not direct, they were levied on rights created solely by State law, depending for their continued existence on the consent of the several States, a volition which Congress has no power to control, and as to which it could not, therefore, exercise its taxing authority; third, if the taxes were not direct, and were not assessed upon objects or rights which were beyond the reach of Congress, nevertheless the taxes were void, because they were not uniform throughout the United States, as required by Article I, section 9, of the Constitution of the United States; fourth, because, although the taxes be held to have been in all respects constitutional, nevertheless they were illegal, since in their assessment the rate of the tax was determined by the aggregate amount of the personal estate of the deceased, and not by the sum of the legacies or distributive shares, or the right to take the same, which were the objects upon which by law the taxes were placed.

Although it may be, in the abstract, an analysis of these questions, in logical sequence, would require a consideration of the propositions in the order just stated, we shall not do so for the following reasons: The inquiry whether the taxes are direct or indirect must involve the prior determination of the objects or rights upon which by law they are imposed and assessed, since it becomes essential primarily to know what the law assesses and taxes in order to completely learn the nature of the burden. So, also, to solve the contention as to want of uniformity, it is requisite to understand not only the objects or rights which are taxed, but the method ordained by the statute for assessing and collecting. This must be the case, since uniformity, in whatever aspect it be considered, involves knowledge as to the operation of the taxing law, an understanding of which can not be arrived at without a clear conception of what the law commands to be done. For these reasons we shall first, in a general way, consider upon what rights or objects death duties, as they are termed in England, are imposed. Having, from a review of the history of such taxes, reached a conclusion on this subject, we shall decide whether Congress has power to levy such taxes. This being

settled, we shall analyze the particular act under review, for the purpose of ascertaining the precise form of tax for which it provides and the mode of assessment which it directs. These questions being disposed of, we shall determine whether the taxes which the act imposes are void, because not apportioned or for the want of uniformity.

It is conceded on all sides that the levy and collection of some form of death duty is provided by the sections of the law in question. Bearing this in mind, the exact form of the tax and the method of its assessment need not be presently defined, since doing so appropriately belongs to the more specific interpretation of the statute to which we shall hereafter direct our attention. Taxes of this general character are universally deemed to relate, not to property *eo nomine*, but to its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property, real or personal as such, because of its ownership and possession. In other words, the public contribution which death duties exact is predicted on the passing of property as the result of death, as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy. Such taxes so considered were known to the Roman law and the ancient law of the continent of Europe. (Smith's *Wealth of Nations*, London ed. of 1811, vol. 3, p. 311.) Continuing the rule of the ancient French law, at the present day in France inheritance and legacy taxes are enforced, being collectible as stamp duties. They are included officially under the general denomination of indirect taxes, for the reason that all inheritance and legacy taxes are considered as levied on the "occasion of a particular isolated act." This view of the inheritance and legacy tax conforms to the official definition of indirect taxes, among which inheritance and legacy taxes are classed, which prevails in France at the present day. The definition is as follows:

"Direct taxes bear immediately upon persons, upon the possession and enjoyments of rights; indirect taxes are levied upon the happening of an event or an exchange."

In Germany and other continental countries in various forms death duties are enforced, in the main, by way of stamp duties. They are there, both in theory and in practice, treated as resulting from the occasion of death, and hence as not legally equivalent with taxes levied on property merely because of its ownership. (Cohn's *Science of Finance* [Veblen's translation], secs. 282, 283, 350; Dos Passos' *Inheritance Tax Law*, sec. 1.)

The term "death duties," by which inheritance and legacy taxes, in whatever form imposed, are described in England, indicates the generic nature of such taxes. In Hanson's *Death Duties* (p. 1) it is said: "Historically, probate duty is the oldest form of death duty, having been established in 1694." The probate duty thus referred to was a fixed tax dependent on the sum of the personal estate within the jurisdiction of the probate court, payable on the grant of letters of probate by means of stamp duties, and was treated as an expense of administration to be deducted out of the residue of the estate. In 1780 this tax was supplemented by what became known as a legacy tax, at first collected by means of a stamp affixed to the receipt, evidencing the payment of a legacy or share in the personal property of a deceased person. It is unnecessary to consider the change in the mere form of this latter tax. The tax was not deducted as an expense of administration, but was charged and collected upon the passing of the individual legacies or interests upon which it was imposed. In 1853 the probate duty tax and

the legacy tax, just referred to, were supplemented by a tax known as the succession duty. This law reached interests in real estate passing or acquired by the death of a person and interests in personal property not covered by the legacy act. This also was not treated as an expense of administration, but was charged upon and collected out of the particular interests subjected to the tax.

The nature of the succession duty is shown by the second section of the act defining the same, which is thus condensed by Hanson at page 40 of his treatise:

"Succession duty is a tax placed on the gratuitous acquisition of property which passes on the death of any person, by means of a transfer (called either a disposition or a devolution) from one person (called the predecessor) to another person (called the successor). Property chargeable with this tax is called a succession."

By the finance act of 1894 the probate duty was superseded by what was termed the estate duty. This, like the probate duty, was a tax distinct from those imposed by the legacy and succession duty acts upon the receipt of real or personal property, or an interest therein, although in some administrative features it modified or regulated the subject of a succession duty. This tax is payable out of the general revenue of the estate. (*Re Bourne*, 1895, 1 Ch., 188, cited by Hanson at page 354.)

The principle upon which the tax rests is thus stated by Hanson at page 63:

"The new duty imposed by the finance act, and called estate duty, as has been said above, supersedes probate duty; but the key to the construction of the finance act lies in remembering that the new estate duty although it is leviable on property which was left untouched by probate duty, such as real estate, yet is in substance of the same nature as the old probate duty. What it taxes is not the interest to which some person succeeds on a death, but the interest which ceased by reason of the death. Unless this principle is kept clearly in view, the mind is constantly tempted by the working of the act to revert to principles of succession duty which have no real connection with the subject."

This summary suffices to indicate the origin, the development, and the theory underlying death duties. A full analysis thereof will be found in Dowell's *History of Taxation* (vol. 3, p. 148, *et seq.*), in Hanson's *Death Duties*, and in the treatise of Dos Passos (sec. 4), and notes, where the various acts are referred to.

In the colonies of Great Britain death duties, as a general rule, obtain. Some of the statutes are modeled upon those of the mother country, and levy taxes on legacies, etc., passing, measured by their value and on the estate proper. Others, again, have merely the estate tax without the legacy tax. The statutes are reviewed in the appendix to Hanson's treatise, beginning at page 717.

A retrospective study of the death duty laws enacted in our own country, national and State, will show that they rest upon the same fundamental conception which have caused the adoption of like statutes in other countries; and especially in their national development, do they substantially conform (to the extent to which they go) to the evolution of the system in England.

As early as 1797 Congress imposed a legacy tax. (1 Stat., 527.) This act was probably the outgrowth of a recommendation contained in a report of the Committee of Ways and Means, presented in the House on Tuesday, March 17, 1796. (*Annals of Congress*, Fourth Congress, first session, pp. 993, *et seq.*) The report recommended (1) the collection of

two millions of dollars by a direct tax; (2) the imposition of "a duty of two per centum ad valorem * * * on all testamentary dispositions, descents, and successions to the estates of intestates, excepting those to parents, husbands, wives, or lineal descendants;" (3) the imposition of various stamp duties; and (4) an increase of the duty on carriages. The act of 1797 continued in force until June 30, 1802. (2 Stat., 148.) In this act, as in the English legacy duty statute of 1780 and supplementary statutes, the mode of collection provided was by stamp duties laid on the receipts evidencing the payment of the legacies or distributive shares in personal property, and the amount was, like the English legacy tax, charged upon the legacies and not upon the residue of the personal estate. The text of the statute is printed in the margin. (a)

In sections 111 and 112 of chapter 119, act of July 1, 1862 (12 Stat., 485), a legacy tax was again enacted. Like in character to the act of 1797, this was a tax imposed upon legacies or distributive shares of personal property. But in the same chapter was contained still another form of death duty. By section 194 a probate duty, proportioned to the amount of the estate and to be paid by way of stamps, was levied. The result of the act of 1862, therefore, was to cause the death duties imposed by Congress to greatly resemble those then existing in England—that is, first, a legacy tax, chargeable against each legacy or distributive share, and a probate duty chargeable against the mass of the estate. The only difference between the system created by the act of 1862 and that existing in England was that the act of 1862 did not embody the succession tax provided for in England, by which interests in real estate passing by death were subjected to a duty. A detailed reference to the provisions of the act of 1862 need not be made, because we shall have occasion to do so in considering the legislation which, in 1864, in effect reenacted, although largely increasing the rates, both the probate duty or tax on the whole estate and the legacy tax on each particular legacy or distributive share. The act of 1864, however, added, in separate sections, a duty on the passing of real estate, in substantial harmony with the principle of the succession tax expressed in the English Succession Duty Act. Thus it came to pass that the system of death duties prevailing in England and that adopted by Congress—leaving out of view the differences in rates and the administrative provisions—

a Chapter XI, July 6, 1797.

a SECTION 1. *Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That from and after the thirty-first day of December next, there shall be levied, collected and paid throughout the United States, the several stamp duties following, to wit: For every skin or piece of vellum, or parchment, or sheet or piece of paper upon which shall be written or printed any or either of the instruments or writings following, to wit: * * * any receipt or other discharge for or on account of any legacy left by any will or other testamentary instrument, or for any share or part of a personal estate divided by force of any statute of distributions, the amount whereof shall be above the value of fifty dollars, and shall not exceed the value of one hundred dollars, twenty-five cents; where the amount thereof shall exceed the value of one hundred dollars and shall not exceed five hundred dollars, fifty cents; and for every further sum of five hundred dollars, the additional sum of one dollar. * * * *Provided,* That nothing in this act contained shall extend to charge with a duty any legacy left by any will or other testamentary instrument, or any share or part of a personal estate, to be divided by force of any statute of distributions which shall be left to, or divided amongst, the wife, children, or grandchildren of the person deceased intestate, or making such will or testamentary instrument, or any recognizance, bill, bond, or other obligation or contract, which shall be made to or with the United States, or any State, or for their use respectively.

were substantially identical, and of a threefold nature—that is, a probate duty charged upon the whole estate, a legacy duty charged upon each legacy or distributive share of personality, and a succession duty charged against each interest in real property. The act of 1864 was amended in several particulars by the act of July 13, 1866. (14 Stat., 140.) These amendments, however, did not materially modify the system of taxation provided in the act of 1864.

Whilst the general plan of the act of 1864 shows that its framers had in mind the English law, this fact was conclusively demonstrated by section 127, wherein the succession or real estate inheritance tax was defined in substantially similar terms to that contained in the English Succession Duty Act. The identity of the conception embodied in the act of 1864 with that existing in England was observed by this court in *Scholey v. Rew* (23 Wall., 349), where, in holding that the subject-matter of the assessment of a succession tax was the devolution of the estate or the right to become beneficially entitled to the same, etc., the court said (p. 349):

“Decided support to the proposition that such is the true theory of the act is derived from the fact that the act of Parliament from which the particular provision under discussion was largely borrowed has received substantially the same construction.”

In the statute of August 27, 1894 (28 Stat., 509), what was in effect a legacy tax was imposed by the provisions of section 28. (*Ib.*, 553.) The tax was *eo nomine* an income tax, but was in one respect the legal equivalent of a legacy tax, since among the items going to make up the annual income which was taxed was “money and the value of all personal property acquired by gift or inheritance.” This law was not enforced. Its constitutionality was assailed on the ground that the income tax, in so far as it included the income from real estate and personal property, was a direct tax within the meaning of the Constitution, and was void because it had not been apportioned. The contention was twice considered by this court. On the first hearing, in *Pollock v. Farmers’ Loan and Trust Company* (157 U. S., 429), it was decided that, to the extent that the income taxes included the rentals from real estate, the tax was a direct tax on the real estate, and was therefore unconstitutional, because not apportioned. Upon the question of whether the unconstitutionality of the tax on income from real estate rendered it legally impossible to enforce all the other taxes provided by the statute, the court was equally divided in opinion. (*Ib.*, 586.) On a rehearing (158 U. S., 601) the previous opinion was adhered to, and it was moreover decided that the tax on income from personal property was likewise direct, and that the law imposing such tax was therefore void because not providing for apportionment. The court said (p. 637):

“Third. The tax imposed by sections twenty-seven to thirty-seven, inclusive, of the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and, therefore, unconstitutional and void because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid.”

The decision that the invalidity of the income tax in the particulars quoted carried with it the other and different taxes which were included in income was not predicated upon the unconstitutionality of such other taxes, but solely upon the conclusion that by the statute there was such an inseparable union between the elements of income derived from the revenues of real estate and personal property and the other constitu-

ents of income provided in the statute that they could not be divided. The court said (p. 637):

"We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations. But this is not such an act, and the scheme must be considered as a whole. Being invalid as to the greater part, and falling, as the tax would, if any part were held valid, in a direction which could not have been contemplated except in connection with the taxation considered as an entirety, we are constrained to conclude that sections twenty-seven to thirty-seven, inclusive, of the act, which became a law without the signature of the President on August 28, 1894, are wholly inoperative and void."

An inheritance and legacy tax imposed by one of the States (Louisiana) was considered in *Mager v. Grima* (8 How., 490). The opinion of the court, delivered by Mr. Chief Justice Taney, upheld the right to levy such taxes. The same subject was passed on in *United States v. Perkins* (163 U. S., 625). The question was whether property bequeathed to the United States could be lawfully included in a succession tax. It was decided that it could be. In the opinion, delivered by Mr. Justice Brown, it was said (p. 628):

"The tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee."

Again (p. 629):

"That the tax is not a tax upon the property itself, but upon its transmission by will or descent, is also held, both in New York and in several other States."

Yet again (p. 630):

"We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it."

Once more, quite recently, the subject was considered in *Magoun v. Illinois Trust and Savings Bank* (170 U. S., 283). The issue for decision was this: A law of the State of Illinois imposed a legacy and inheritance tax, the rate progressing by the amount of the beneficial interest acquired. This progression of rates was assailed in the courts of Illinois as being in violation of the constitution of that State, requiring equal and uniform taxation. The State court having decided that the progressive feature did not violate the constitution of the State, the case came to this court upon the contention that the establishment of a progressive rate was a denial both of due process of law and of the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution. These complaints were held to be untenable. In the course of its opinion, the court, speaking through Mr. Justice McKenna, after briefly advertng to the history of inheritance and legacy taxes in other countries, referred to their adoption in many of the States of the Union as follows (pp. 287 to 288):

"In the United States they were enacted in Pennsylvania in 1826; Maryland, 1844; Delaware, 1869; West Virginia, 1887, and still more

recently in Connecticut, New Jersey, Ohio, Maine, Massachusetts, 1891; Tennessee in 1891, chapter 25, now repealed by chapter 174, acts 1893. They were adopted in North Carolina in 1846, but repealed in 1883. Were enacted in Virginia in 1844, repealed in 1855, reenacted in 1863, and repealed in 1884. Other States have also enacted them—Minnesota by constitutional provision.

"The constitutionality of the taxes have been declared, and the principles upon which they are based explained in *United States v. Perkins* (163 U. S., 625, 628); *Strode v. Commonwealth* (52 Pa. Stat., 181); *Eyre v. Jacob* (14 Grat., 422); *Schoolfield v. Lynchburg* (78 Va., 366); *State v. Dalrymple* (70 Md., 294); *Clapp v. Mason* (94 U. S., 589); *in re Merriam's Estate* (141 N. Y., 479); *State v. Hamlin* (86 Me., 495); *State v. Alston* (94 Tenn., 674); *in re Wilmerding* (117 Cal., 281); *Dos Passos Collateral Inheritance Tax* (20); *Minot v. Winthrop* (162 Mass., 113); *Gelsthorpe v. Furnell* [Mont.], (51 Pac. Rep., 267). See, also, *Scholey v. Rew* (23 Wall., 331).

"It is not necessary to review these cases or state at length the reasoning by which they are supported. They are based on two principles: (1) An inheritance tax is not one on property, but one on the succession. (2) The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the States may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective State constitutions requiring uniformity and equality of taxation."

Thus, looking over the whole field, and considering death duties in the order in which we have reviewed them—that is, in the Roman and ancient law, in that of modern France, Germany, and other continental countries, in England and those of her colonies where such laws have been enacted, in the legislation of the United States and the several States of the Union, the following appears: Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes, or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principal that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.

Having ascertained the nature of death duties, the first question which arises is this: Can the Congress of the United States levy a tax of that character? The proposition that it can not rests upon the assumption that, since the transmission of property by death is exclusively subject to the regulating authority of the several States, therefore the levy by Congress of a tax on inheritances or legacies, in any form, is beyond the power of Congress, and is an interference by the National Government with a matter which falls alone within the reach of State legislation. It is to be remarked that this proposition denies to Congress the right to tax a subject-matter which was conceded to be within the scope of its power very early in the history of the Government. The act of 1797, which ordained legacy taxes, was adopted at a time when the founders of our Government and framers of our Constitution were actively participating in public affairs, thus giving a practical construction to the Constitution which they had helped to establish. Even the then Mem-

bers of the Congress who had not been delegates to the convention which framed the Constitution must have had a keen appreciation of the influences which had shaped the Constitution and the restrictions which it embodied, since all questions which related to the Constitution and its adoption must have been, at that early date, vividly impressed on their minds. It would, under these conditions, be indeed surprising if a tax should have been levied without question upon objects deemed to be beyond the grasp of Congress because exclusively within State authority. It is, moreover, worthy of remark that similar taxes have at other periods and for a considerable time been enforced; and, although their constitutionality was assailed on other grounds held unsound by this court, the question of the want of authority of Congress to levy a tax on inheritances and legacies was never urged against the acts in question. Whilst these considerations are of great weight, let us for the moment put them aside to consider the reasoning upon which the proposition denying the power in Congress to impose death duties must rest.

Confusion of thought may arise unless it be always remembered that, fundamentally considered, it is the power to transmit or the transmission and receipt of property by death which is the subject levied upon by all death duties. The qualification of such taxes as privileged taxes, or describing them as levied on a privilege, may also produce misconception, unless the import of these words be accurately understood. They have been used where the power of a State government to levy a particular form of inheritance or legacy tax has in some instances been assailed because of a constitutional limitation on the taxing power. Under these circumstances, the question has arisen whether, because of the power of the State to regulate the transmission of property by death there did not therefore exist a less trammelled right to tax inheritances and legacies than obtained as to other subject-matters of taxation, and upon the affirmative view being adopted, a tax upon inheritances or legacies for this reason has been spoken of as privilege taxation or a tax on privileges. The conception, then, as to the privilege, whilst conceding fully that the occasion of the transmission or receipt of property by death is a usual subject of taxing power, yet maintains that a wider discretion or privilege is vested in the States, because of the right to regulate. Courts which maintain this view have therefore treated death duties as disenthralled from limitations which would otherwise apply if the privilege of regulation did not exist. The authorities which maintain this doctrine have been already referred to in the citation which we have made from *Magoun v. United States* (170 U. S., 288). An illustration is found in *United States v. Perkins* (163 U. S., 625), where the right of the State of New York to levy a tax on a legacy bequeathed to the Government of the United States was in part rested on the privilege enjoyed by the State of New York to regulate successions. Some State courts, on the other hand, have held that, despite the power of regulation, no greater privilege of taxation exists as to inheritance and legacy taxes than as to other property. (*Cope's Appeal*, 191 Pa. Stat., 1; *State v. Ferris*, 53 Ohio Stat., 314; *State v. Gorman*, 40 Minn., 232; *Curry v. Spencer*, 61 N. H., 624.) In *State v. Switzler* (143 Mo., 287) the power of the legislature of Missouri to levy a uniform tax upon the succession of estates was conceded, though such tax was declared not to be a tax upon property in the ordinary sense. The court, nevertheless, held that the particular tax in question, which was progressive in rate, was invalid, because it violated a provision of the State constitution; the decision, in effect, being that because the legislature had the power to regulate

successions, it was not thereby justified in levying a tax which was not sanctioned by the State constitution.

All courts and all Governments, however, as we have already shown, conceive that the transmission of property occasioned by death, although differing from the tax on property as such, is nevertheless a usual subject of taxation. Of course, in considering the power of Congress to impose death duties, we eliminate all thought of a greater privilege to do so than exists as to any other form of taxation, as the right to regulate successions is vested in the States and not in Congress.

It is not denied that, subject to a compliance with the limitations in the Constitution, the taxing power of Congress extends to all usual objects of taxation. Indeed, as said in the License Tax Cases (5 Wall., 462, 471), after referring to the limitations expressed in the Constitution, "Thus limited, and thus only, it (the taxing power of Congress) reaches every subject, and may be exercised at discretion." The limitation which would exclude from Congress the right to tax inheritances and legacies is made to depend upon the contention that as the power to regulate successions is lodged solely in the several States, therefore Congress is without authority to tax the transmission or receipt of property by death. This proposition is supported by a reference to decisions holding that the several States can not tax or otherwise impose burdens on the exclusive powers of the National Government or the instrumentalities employed to carry such powers into execution, and, conversely, that the same limitation rests upon the National Government in relation to the powers of the several States. (*Weston v. Charleston*, 2 Pet., 449; *McCulloch v. Maryland*, 4 Wheat., 431, 439; *Bank of Commerce v. New York City*, 2 Black, 620; *Collector v. Day*, 11 Wall., 124; *United States v. Railroad Company*, 17 Wall., 327; *Railroad Company v. Peniston*, 18 Wall., 5.)

But the fallacy which underlies the proposition contended for is the assumption that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the State to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate. In legal effect, then, the proposition upon which the argument rests is that wherever a right is subject to exclusive regulation, by either the Government of the United States on the one hand or the several States on the other, the exercise of such rights as regulated can alone be taxed by the Government having the mission to regulate. But when it is accurately stated, the proposition denies the authority of the States to tax objects which are confessedly within the reach of their taxing power, and also excludes the National Government from almost every subject of direct and many acknowledged objects of indirect taxation. Thus imports are exclusively within the taxing power of Congress. Can it be said that the property when imported and commingled with the goods of the State can not be taxed, because it had been at some prior time the subject of exclusive regulation by Congress? Again, interstate commerce is often within the exclusive regulating power of Congress. Can it be asserted that the property of all persons or corporations engaged in such commerce is not the subject of taxation by the several States, because Congress may regulate interstate commerce? Conveyances, mortgages, leases, pledges, and, indeed, all property and the contracts which arise from its ownership, are subject more or less to State regulation, exclusive in its nature. If the

proposition here contended for be sound, such property or dealings in relation thereto can not be taxed by Congress, even in the form of a stamp duty. It can not be doubted that the argument when reduced to its essence demonstrates its own unsoundness, since it leads to the necessary conclusion that both the national and State governments are divested of those powers of taxation which from the foundation of the Government admittedly have belonged to them. Certainly a tax placed upon an inheritance or legacy diminishes, to the extent of the tax, the value of the right to inherit or receive, but this is a burden cast upon the recipient and not upon the power of the State to regulate. This distinction shows the inapplicability to the case in hand of the statement made by Mr. Chief Justice Marshall in *McCulloch v. Maryland* (4 Wheat., 431), "that the power to tax involves the power to destroy." This principle is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had there would be an end of all taxation—that is to say, if a lawful tax can be defeated because the power which is manifested by its imposition may when further exercised be destructive, it would follow that every lawful tax would become unlawful and, therefore, no taxation whatever could be levied. Under our constitutional system both the national and the State governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other, for if it did there would practically be an end of the dual system of government which the Constitution established. The contention was adversely decided in the License Tax Cases, *supra* where (p. 470), the court said: "We come now to examine a more serious objection to the legislation of Congress in relation to the dealings in controversy. It was argued, for the defendants in error, that a license to carry on a particular business gives no authority to carry it on; that the dealings in controversy were parcel of the internal trade of the State in which the defendants resided; that the internal trade of a State is not subject, in any respect, to legislation by Congress, and can neither be licensed nor prohibited by its authority; that licenses for such trade, granted under acts of Congress, must, therefore, be absolutely null and void, and consequently that penalties for carrying on such trade without such license could not be constitutionally imposed." The court, after thus stating the argument, decided that the license was a mere form of excise taxation; that it conferred no right to carry on the business (the selling of lottery tickets and the liquor traffic) if forbidden to be engaged in by the State, but license was applicable whenever under the State law such business was permitted to be done. Many other opinions of this court have pointed out the error in the proposition relied on, and render it unnecessary to do more than refer to them. (*Lane County v. Oregon*, 7 Wall., 71, 77; *Veazie Bank v. Fenno*, 8 Wall., 533, 547; *National Bank v. Commonwealth*, 9 Wall., 353, 362; *Collector v. Day*, 11 Wall., 113, 127; *United States v. Railroad Company*, 17 Wall., 322, 327; *Railroad Company v. Peniston*, 18 Wall., 5, 36; *California v. Pacific Railroad Company*, 127 U. S., 1, 40.)

We are then brought to a consideration of the particular form of death duty which is manifested by the statute under consideration. The sections embodying it are printed in the margin.(a)

It is at the outset obvious that the exact meaning of the statute is not free from perplexity, as there are clauses in it, when looked at apart from their context, which may give rise to conflicting views. It is plain, however, that the statute must mean one of three things:

1. The tax which it imposes is on the passing of the whole amount of

a Act of June 13, 1898, ch. 448.

SEC. 29. That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of \$10,000 in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body of bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: Where the whole amount of said personal property shall exceed in value \$10,000, and shall not exceed in value the sum of \$25,000, the tax shall be—

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every \$100 of the clear value of such interest in such property.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every \$100 of the clear value of such interest.

Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of three dollars for each and every one hundred dollars of the clear value of such interest.

Fourth. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than as hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person who died possessed, as aforesaid, shall be exempt from tax or duty.

Where the amount or value of said property shall exceed the sum of \$25,000, but shall not exceed the sum or value of \$100,000, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of \$100,000, but shall not exceed the sum of \$500,000, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of \$500,000, but shall not exceed the sum of \$1,000,000, such rates of duty shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of \$1,000,000, such rates of duty shall be multiplied by three.

SEC. 30. That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay, to the collector or deputy collector of the district of which the deceased person was a resident, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the

the personal estate, with a progressive rate depending upon the sum of the whole personal estate; or,

2. The tax which it levies is placed on the passing of legacies or distributive shares of personal property at a progressive rate, the amount of such rate being determined, not by the separate sum of each legacy or distributive share, but by the volume of the whole personal estate. This is the mode in which the tax was computed by the assessor, and which was sustained by the court below; or,

3. The tax is on the passing of legacies or distributive shares of per-

amount of duty which has accrued, or shall accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax, a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interest therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of \$500: *Provided*, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be prima facie evidence of its truth, and that the requirements of the law had been complied with by the officers of the Government.

sonalty, with a progressive rate on each, separately determined by the sum of each of such legacies or distributive shares.

On the very threshold, the theory that the tax is not on particular legacies or distributive shares passing upon a death, but is on the whole amount of the personal property of the deceased, is rebutted by the heading, which describes what is taxed, not as the estates of deceased persons, but as "legacies and distributive shares of personal property." This, whilst not conclusive, is proper to be considered in interpreting the statute, when ambiguity exists and a literal interpretation will work out wrong or injury. (*United States v. Fisher*, 2 Cranch, 358, 386; *United States v. Palmer*, 3 Wheat., 610, 631; *United States v. Union Pacific Railroad Company*, 91 U. S., 72; *Smythe v. Fiske*, 23 Wall., 374, 380; *Coosaw Mining Company v. South Carolina*, 144 U. S., 550.)

The opening words of section 29 may, for clearness, be thus arranged :

"That any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares arising from personal property, * * * passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, * * * shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows : that is to say," etc.

Thus collocated, the statute clearly imposes the duty on the particular legacies or distributive shares, and not on the whole personal estate. It does not say that the tax is levied on the personal estate left by the deceased person, but it is imposed on legacies or distributive shares arising from such property. This is made clearer by considering that in the very same section the tax is described as being upon "any interest which may have been transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, to any person or persons," etc. That is to say, whilst the law places the duty on any legacy or distributive share passing by death, it puts a like burden on gifts which may have been made in contemplation of death and otherwise than by last will and testament.

Following the paragraph from which the foregoing has been quoted, the statute makes five distinct classes or enumerations, whereby the rate of the tax is varied—that is, it is made more or less, depending upon the relationship, or want of relationship, of the legatee or distributee to the deceased. But this enumeration can only be explained upon the hypothesis that the law intended to impose a greater or less tax upon a legatee or distributee, arising from his degree of relationship or his being a stranger in blood to the deceased. Thus it can not be doubted that, in assessing the tax, the position of each separate legatee or distributee must be taken into view in order to ascertain the primary rate which the statute establishes. One of two things must arise. When the rate of tax is thus calculated upon the particular attitude to the deceased of each of the legatees or distributees, the sum of the tax must be deducted either from each particular legacy or from the mass of the whole personal estate. If it is deducted from each particular legacy, then it is manifest that the tax imposed will have been levied, not upon the mass of the estate, but upon each particular legatee or beneficiary, since the share of such person will have paid a rate of taxation predicted upon the amount of the legacy and the relationship, or want of relationship, of the particular recipient thereof to the deceased. This being the case, no room would be left for the contention that the tax was imposed on

the whole estate. On the other hand, if the whole sum of the taxation on all the shares, calculated on the basis of the relationship of each beneficiary and the amount received, be deducted from the mass of the estate, then each recipient would pay only a proportion of the amount without reference to his relationship to the deceased. This would result in imposing the tax on the whole personal estate, and ratably distribute the burden among all the beneficiaries. But to reach this the entire classification, grading the rate of the tax by the degrees of relationship, would have to be disregarded. The dilemma, therefore, which is involved in the contention that the statute imposes the tax, not on each legacy or distributive share, but on the whole personalty, is this: If the tax is levied and collected according to the classifications in the statute, it is clearly on the legacy or distributive share. If, on the contrary, it is levied on the entire personal estate, then the classifications of the statute must be ignored and the construction be upheld which maintains that the act has classified the rate of tax by the relationship of the beneficiaries to the deceased, and has then disregarded the classification by collecting the tax wholly without reference to such relationship. This construction, besides eliminating a large portion of the text of the act, would do violence to its plain import, which is to make the rate of the tax depend upon the character of the links connecting those taking with the deceased. This is greatly fortified by other portions of the act. At the close of the fifth subdivision of section 29, one of the clauses creating a classification with respect to remote relationship, or want of relationship, to the deceased, it is provided as follows:

“Provided, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person died possessed as aforesaid, shall be exempt from tax or duty.”

Now, mark, the word is “passing” by will, etc., which excludes a conception that the whole amount of the estate, and not the particular portions thereof which passed, is the subject of the tax; and the exemption, from the tax or duty, of the legacy, etc., given to the husband or wife of a deceased, implies that the scheme of taxation is of the legacies, etc., and not of the whole personal estate. This must be so, unless it can be said that the statute in terms exempts the legacy to a husband or wife from the legacy tax otherwise imposed, although no legacy taxes resulted from the statute.

The provisions for the collection of the tax contained in section 30 of the act confirm the construction that the passing of each legacy or distributive share, and not the entire personal estate of a deceased person, forms the subject of the tax. Thus, before payment and distribution to the legatees, etc., an executor, administrator, or trustee is required to pay “the amount of the duty or tax assessed upon such legacy or distributive share,” and to “make and render a schedule,” etc., in duplicate, “of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon,” and the schedule is required to “contain the names of each and every person entitled to any beneficial interest therein.”

Whatever be the obscurity, it is illumined when the light of the previous legislation, which we have already reviewed, is thrown on it. The passing of legacies and distributive shares were the objects taxed under the English Legacy Act. They were the subjects taxed under the act of Congress of 1797. By the act of 1862, as we have seen, the whole estate was reached by a probate duty, whilst a distinct duty was charged upon legacies and distributive shares in personal property

When the act of 1864 was enacted there was added a succession tax on real estate, modeled, as said by this court and as shown by the act itself, upon the English Succession Duty Act, which treated each particular gift of real estate as a distinct succession, separately liable for the duty laid by the act. The legacy tax and the succession tax were thus correlated and rested upon the same theory—that is, both considered, they created a tax on the passing of each particular gift or distributive share of both the personal and real estate treated as separate, one from the other, and each as forming a distinct estate, subject to taxation. To assume that, when the succession duty was adopted in 1864, that the legacy tax, which was also reenacted in that act, lost its character and became a tax levied, not on the passing of the legacies and distributive shares, but upon the whole amount of the estate before passing, would destroy the entire harmony of the system, and lead to a confession that a confusion of thought existed which can not in reason be admitted. Indeed, it is difficult to conceive that the act of 1864 contemplated that either the legacy duty or the succession duty which it imposed should be upon the whole estate, since the tax to be paid by the whole estate was therein distinctly and separately provided for by means of the probate duty. If the tax on the whole estate can be, by implication, inserted, the same reasoning would also imply that the succession duty must be likewise treated. It would thus be that the entire act of 1864 would be in force despite its repeal and the failure to reenact in the present law either the whole estate or succession duty.

What it was considered the act of 1864 levied the tax on is also in addition demonstrated by the amendments made to the act of 1864 in 1866. One of these amendments was: "That any legacy or share of personal property passing as aforesaid to a minor child of the person who died possessed as aforesaid shall be exempt from taxation under this section, unless such legacy or share shall exceed the sum of one thousand dollars, in which case the excess only above that sum shall be liable to said taxation." Another was that any tax paid under the provisions of sections 124 and 125 of the act of 1864 should "be deducted from the particular legacy or distributive share on account of which the same is charged." In other words, the act expressly commanded that to be done which it was impossible should be done compatibly with any hypothesis that the tax was on the whole personal estate, for, as we have seen, under that assumption the deduction of the tax from the whole estate was essential.

That the provisions of the act of 1864 were in mind when the present act was drafted is apparent, since it is not disputed that the act under review, so far as the tax on legacies and distributive shares is concerned, is an exact reproduction of the original act of 1864, except to the extent that the present act contains provisions relating to a progressive increase of rates. We say of the original act, because the present act does not contain in it the amendments to which we have referred, made in 1866, the fair inference being that the writer of the present act had before him the original text of the act of 1864, and not that text as amended by the act of 1866.

As the only provisions added to the present law relate to the progressive rate upon the legacies, it follows that, unless these added clauses provide for a tax on the whole estate instead of the legacies, it is a demonstration that the whole estate is not taxed by the present act. That the progressive rate features inserted in the act now under review have even no tendency to bring about such a result, we proceed now to

demonstrate. We reproduce such portions of section 29 as are essential, putting in brackets the words found in the act of 1898, under review, which were not contained in the corresponding provisions existing in the act of 1864:

"That any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares arising from personal property where the whole amount of such personal property as aforesaid shall exceed the sum of [ten] thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax to be paid to the United States, as follows—that is to say, [Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars, the tax shall be:]"

Immediately following this are five classifications of beneficiaries, each varying in rate. These are followed by the progressive rate clause, which are as follows:

["Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half, and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of such property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of such property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three."]

Observing closely the text, it is apparent that the clause therein which points out what is taxed is an exact copy of the act of 1864, except the substitution of the "ten" for the word "one." The subject taxed, therefore, under the present act is the same which was taxed under the act of 1864. This is the equivalent of a mathematical certainty. Coming, then, to the added provision at the end of the first paragraph, it says, "Where the whole amount of said personal property shall exceed in value," etc. This, however, creates no new object of taxation, but simply provides that where said personal property—that is, the property previously specified—exceeds a certain amount, a given rate shall be imposed. So, in the further addition, pointing out the progressive feature, the law says, "Where the amount or value of said property shall exceed the sum of," etc., thus clearly again referring to the objects of taxation, the property described in the first part of the act, which was identically the same thing described in the act of 1864. The demonstration, therefore, is conclusive that the progressive feature clause added in the present act creates no new subject of taxation; it simply provides for the progressive rates on the said property mentioned in the opening sentences, which is described exactly as it was in the act of 1864. Now, as the act of 1864 taxed, not the whole estate, but each particular legacy or distributive share, the conclusion can not

be escaped that the present law does the same thing, except that there is added thereto a progressive rate.

The tax being then on the legacies and distributive shares, the rate primarily being determined by the relation of the legatees or distributees to the estate, does the law command that the progressive rate of tax which it imposes on the legacies or distributive shares shall be measured, not separately by the amount of each particular legacy or distributive share, but by the sum of the whole personal estate? This, as we have said, is the interpretation of the act which was adopted by the assessor in levying the taxes under review, and which was sustained by the court below.

The unsoundness of the construction, that the act measures the rate of tax by the whole estate, is fully shown by what we have already said, for, as under the act of 1864 the legacies and distributive shares alone were taxed, and as in reenacting it the exact language was retained (omitting the separate provisions in the act of 1864, taxing the whole estate by a probate duty and taxing successions), and as the progressive rates only refer to the object taxed, as provided in the act of 1864, it results that under no reasonable construction can the present act be held to provide for a rate of tax computed on the whole estate. Even, however, if all the previous history be shut out of view, and even if the omission from this act of the whole estate duty which obtained under the act of 1864 be for the moment forgotten, the text of the law, considered alone, would not support the construction that it provides for a tax upon each legacy and distributive share by a rate of tax measured by the whole estate. In order to make this clear we will briefly analyze the text. In doing so, however, we eliminate the attempt made by counsel in argument to show the significance thereof by expressions used in the course of the debate by certain members of the Senate. (*Maxwell v. Dow*, 176 U. S., 581, and cases there cited.)

The meaning of the act largely turns upon the following words, contained in the opening paragraph of section 29: "Where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing," etc. If these words refer to the whole amount of the estate left by a deceased person, then the words added in the act of 1898, to the end of the paragraph, viz, "where the whole amount of *said* personal property shall exceed in value ten thousand, and shall not exceed in value the sum of twenty-five thousand dollars, the tax shall be," as stated in five classifications next enumerated, must refer to the same thing. It follows likewise that the progressive-rate clause, which says, "where the amount or value of *said* property shall exceed the sum of," etc., must relate to the same thing—that is, the whole amount of the estate, as stated in the opening sentences of section 29. If this view be correct, then all legacies in an estate of ten thousand dollars are exempt, and all legacies, whatever be their amount, in an estate above ten thousand dollars, have the original rate adjusted according to the classifications, and that rate is increased progressively by the whole amount of the estate, and not by the amount of the legacy. If, on the other hand, the words "where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars," found in the first sentence of section 29, relate to the whole amount of each legacy, then legacies under ten thousand dollars are not taxable, and those above ten thousand pay the original rate provided in the classifications, and become subject to the progressive increase clause, according to the amount of the legacy, and not by the whole amount of the estate.

But the pivotal words in the first sentence are not simply "the whole amount of such personal property," but the "whole amount of such personal property *as aforesaid*." This can only refer to the preceding part of the sentence, where what is contemplated by the words "*as aforesaid*" is and can alone be "*any legacies or distributive shares arising from personal property * * * passing after the passage of this act.*" In other words, the statute itself by the reference clause establishes that the whole amount referred to is the sum or value of each particular legacy, etc., separately considered, passing from the deceased to the taker thereof. And this construction of the vital words referred to, derived from what immediately precedes them, is sustained by what immediately follows them—that is, the clause imposing the tax on "any personal property or interest therein, transferred by deed," etc., "made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons," etc. This latter clause treats each item of property given in contemplation of death otherwise than by last will and testament as a distinct entity to be considered for the purpose of levying the tax. Each of such items, therefore, separately considered, becomes for the purpose of the tax, the whole amount of such personal property, the statute clearly recognizing that there may be partial and distinct interests in each item of personal property, such as an interest for life in one person with a remainder in another. Thus by the two clauses, which are linked together by the words "the whole amount of such personal property," it develops that the amount referred to is the separate and distinct sums or items of personal property passing, and not the whole amount of the entire estate, which, as has been shown in considering the previous proposition, the act did not purport to tax as such.

The subsequent provisions of the act lend cogency to this view. Thus, in section 30, it is made the duty of the executor, etc., to pay over to the collector "the amount of the duty or tax assessed upon *such* legacy or distributive share," and he is also commanded to deliver to the collector a schedule "of the amount of *such* legacy or distributive share, together with the amount of the duty which has accrued or shall accrue thereon."

At the risk of repetition, we recur again to a particular feature in the prior legislation, because it very pertinently points out the error which has given rise to the assumption that the "whole personal estate as aforesaid" meant in the act of 1864, or means in this act, the whole amount of the personal estate left by the deceased, and not the whole amount of each legacy considered as a separate estate for the purpose of taxation. Attention has been called to the fact that, in accordance with the English system, the act of 1864 engrafted on the provisions of the act of 1862 a succession or real estate inheritance tax. In doing so, it was unequivocally declared in the law that each separate gift of real property was a distinct succession or estate. In other words, the statute itself announced the rule that the whole amount of each estate subject to taxation, under the succession tax, was the whole amount of each separate item of gift treated as an estate for the purpose of the levy and collection of the taxes thereon. How, then, can it be supposed that the act of 1864 contemplated that the section relating to the legacy should have one meaning, whilst the whole amount of the estate in the section relating to succession or real estate taxes should have another? Must it not be considered that the statute provided for no such discordant and unjust discrimination, but that, on the contrary, it harmoniously

expressed the rule obtaining from the beginning—that is, the levy of a legacy tax on personal estate passing by death to each particular beneficiary treated separately as the amount subject to taxation, and the same rule applied to the succession tax by treating each item of real estate as the whole amount of an estate passing separately for the purpose of taxation?

It is true that in the practical execution of the act of 1864 the words “the whole amount of such personal property * * * shall exceed the sum of one thousand dollars,” were administratively construed as applying to the entire personal estate left by one deceased, and not to the distinct legacies or interests. It resulted that where an estate did not equal one thousand dollars, no tax was collected upon legacies or distributive shares therein, and where the estate exceeded one thousand dollars all legacies and distributive shares, whatever the amount of each, were taxed. Any force resulting from this administrative view, however, is weakened by the fact that the contrary construction prevailed as to the other portions of the act of 1864, the succession duty, where the amount of the tax was determined by the amount or value of each particular item of real property. The administrative construction, therefore, of the act of 1864 was contradictory, since it enforced one rule on the one hand and an absolutely conflicting one on the other. Besides, the whole estate was taxed as such by the probate duty found in the act of 1864.

As we have said, the act of 1864 was repealed in 1870. (16 Stat., 256.) After the repeal, the court was called upon, in *Mason v. Sargent* (104 U. S., 689), to consider whether, when one who held a life estate in a legacy died subsequent to the repeal of the act, the interest of the legatees in remainder was subject to the inheritance tax. In passing upon this question, this court said (p. 690):

“The tax in question was imposed by section 124 of the act of June 30, 1864, c. 173 (13 Stat., 223, 285), upon legacies or distributive shares of personal property exceeding the sum of \$1,000, passing, after the passage of the act, from a decedent, either testate or intestate, in the hands of an executor, administrator, or trustee, varying in rate, as the party beneficially entitled was less or more remote in consanguinity, or a stranger in blood, to the person from whom it passed; with a proviso that legacies or distributive interests in intestate estates, passing to husband or wife, should be exempt from such tax.”

The opinion thus expressed is in conflict with the assumption that the whole estate contemplated, not each legacy or distributive share, but the entire amount of personal property of the deceased, and this construction may be well considered to have been in effect adopted by the reenactment of the act of 1864 without any change indicating an intention to the contrary.

Granting, however, there is doubt as to the construction, in view of the consequences which must result from adopting the theory that the act taxes each separate legacy by a rate determined, not by the amount of the legacy, but by the amount of the whole personal estate left by the deceased, we should be compelled to solve the doubt against the interpretation relied on. The principle on which such construction rests was thus defended in argument. The tax is on each separate legacy or distributive share, but the rate is measured by the whole estate. In other words, the construction proceeds upon the assumption that Congress intended to tax the separate legacies, not by their own value, but by that of a wholly distinct and separate thing. But this is equivalent to saying

that the principle underlying the asserted interpretation is that the house of A, which is only worth one thousand dollars, may be taxed, but that the rate of the tax is to be determined by attributing to A's house the value of B's house, which may be worth a hundredfold the amount. The gross inequalities which must inevitably result from the admission of this theory are readily illustrated. Thus, a person dying, and leaving an estate of \$10,500, bequeaths to an hospital ten thousand dollars. The rate of tax would be 5 per cent, and the amount of tax five hundred dollars. Another person dies at the same time, leaves an estate of one million dollars, and bequeaths ten thousand dollars to the same institution. The rate of tax would be 12½ per cent, and the amount of the tax \$1,250. It would thus come to pass that the same person, occupying the same relation, and taking in the same character, two equal sums from two different persons, would pay in the one case more than twice the tax that he would in the other. In the arguments of counsel tables are found which show how inevitable and profound are the inequalities which the construction must produce. Clear as is the demonstration which they make, they only serve to multiply instances afforded by the one example which we have just given.

We are, therefore, bound to give heed to the rule, that where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute. (*Bate Refrigerating Company v. Sulzeberger*, 157 U. S. 37; *Wilson v. Rousseau*, 4 How., 646, 680; *Bloomer v. McQuewan*, 14 How., 539, 553; *Blake v. National Banks*, 23 Wall., 307, 320; *United States v. Kirby*, 7 Wall., 482, 486.) Indeed, the confusion which gives rise to both of the constructions of the statute which we have just considered comes from the want of insight pointed out by Hanson in a passage which we have heretofore quoted—that is, it arises from not keeping in mind the distinction between a tax on the interest to which some person succeeds on a death and a tax on the interest which ceased by reason of the death, the two being different objects of taxation.

It may be doubted by some, aside from express constitutional restrictions, whether the taxation by Congress of the property of one person, accompanied with an arbitrary provision that the rate of tax shall be fixed with reference to the sum of the property of another, thus bringing about the profound inequality which we have noticed, would not transcend the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems. On this question, however, in any of its aspects, we do not even intimate an opinion, as no occasion for doing so exists, since, as we understand the law, we are clearly of opinion that it does not sustain the construction which was placed on it by the court below.

By elimination, the process of reasoning which we have resorted to in order to demonstrate the unsoundness of the first two contentions as to the meaning of the statute renders it unnecessary to say anything in elaboration of the significance of the statute as embodied in the third proposition, which is, that the tax is on the legacies and distributive shares, the rate being primarily determined by the classifications and being progressively increased according to the amount of the legacies or shares. Its correctness is at once apparent when the other views are disposed of. As the "whole amount of such personal property as aforesaid" relates to the sum of each legacy or distributive share considered separately, it follows that all legacies not exceeding ten thousand dollars are not taxed, and that those above that amount are taxed primarily by

the degree of relationship or absence thereof, specified in the five classifications contained in the statute, and that the rate of tax is progressively increased by the amount of each separate legacy or distributive share. This being the correct interpretation of the statute, it follows that the court below erroneously maintained a contrary construction, and, therefore, the tax assessed and collected was for a larger amount than the sum actually due by law.

The precise meaning of the law being thus determined, the question whether the tax which it imposes is direct, and hence subject to the requirement of apportionment, arises for consideration. That death duties, generally, have been from the beginning in all countries considered as different from taxes levied on property, real or personal, directly on account of the ownership and possession thereof, is demonstrated by the review which we have previously made. It has also been established, by what we have heretofore said, that such taxes, almost from the beginning of our national life, have been treated as duties, and not as direct taxes. Of course, they concern the passing of property by death, for if there was no property to transmit there would be nothing upon which the tax levied on the occasion of death could be computed. This legislative and administrative view of such taxes has been directly upheld by this court. In *Scholey v. Rew* (23 Wall., 349), to which we have heretofore referred, the question presented was the constitutionality of the provisions of the act of 1864, imposing a succession duty as to real estate. The assertion was that the duty was repugnant to the Constitution, because it was a direct tax and had not been apportioned. The tax was decided to be constitutional. The court said (p. 346):

"But it is clear that the tax or duty levied by the act under consideration is not a direct tax within the meaning of either of these provisions. Instead of that it is plainly an excise tax or duty, authorized by section 8 of Article I, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare.

* * * * *

"Whether direct taxes in the sense of the Constitution comprehend any other tax than a capitation tax and a tax on land is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include the tax on income, which can not be distinguished in principle from a succession tax such as the one involved in the present controversy."

This is decisive against the contrary contention here relied on, unless it be that the decision in *Scholey v. Rew* has been overruled, and, therefore, is no longer controlling.

The argument is that the decision in *Scholey v. Rew* was overruled in *Pollock v. Farmers' Loan and Trust Company* (157 U. S., 429; 158 U. S., 601). This contention is thus supported in argument.

As in the course of the opinion in *Scholey v. Rew*, the court said that taxes on successions could not be distinguished in principle from an income tax, therefore the decision in the *Pollock* case, which held that an income tax was direct, it is argued, necessarily decided that an inheritance tax was also direct. But in the *Pollock* case the decision in *Scholey v. Rew* was not overruled. On the contrary, the correctness of the decision in the latter case as to the particular matter which it actually decided in effect was reaffirmed. In consequence of the statement made in *Scholey v. Rew*, that an income tax and a succession tax could not be distinguished

one from the other, that case was relied on in the Pollock case by counsel in argument and by the members of the court who dissented, as establishing, for the reason stated, that the income tax was not direct. The court, however, treated *Scholey v. Rew* as inapplicable to an income tax, because it considered that whether an income tax was direct was not actually involved in the latter case, and hence the illustration which was used in *Scholey v. Rew* as to an income tax was held not to have been a decision on the question of whether or not an income tax was direct.

The court said (157 U. S., 577):

"*Scholey v. Rew* (23 Wall., 331), was the case of a succession tax, which the court held to be 'plainly an excise tax or duty' upon the devolution of the estate or the right to become beneficially entitled to the same, or the income thereof, in possession or expectancy. It was like the succession tax of a State, held constitutional in *Mager v. Grinia* (8 How., 490); and the distinction between the power of a State and the power of the United States to regulate the succession of property was not referred to, and does not appear to have been in the mind of the court. The opinion stated that the act of Parliament from which the particular provision under consideration was borrowed had received substantially the same construction, and cases under that act hold that a succession duty is not a tax upon income or upon property, but on the actual benefit derived by the individual, determined as prescribed. (*In re Elwes*, 3 H. and N., 719; *Attorney-General v. Sefton*, 2 H. and C., 362; S. C., H. L., 3 H. and C., 1023; 11 H. L., Cas., 257.)"

The argument now made, therefore, comes to this: Although in the Pollock case the doctrine which the court considered as having been actually decided in *Scholey v. Rew* was not overruled, nevertheless, because an example which was made use of in the course of the opinion in *Scholey v. Rew* was disregarded, the Pollock case therefore overruled *Scholey v. Rew*. The issue presented in the Pollock case was whether an income tax was direct within the meaning of the Constitution. The contentions which the case involved were thus presented. On the one hand, it was argued that only capitation taxes and taxes on land as such were direct, within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that, in principle, direct taxes, in the constitutional sense, embraced not only taxes on land and capitation taxes, but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed that the previous adjudications of this court had settled nothing to the contrary. The issues which were thus presented in the Pollock case, it will be observed, had been expressly reserved in *Scholey v. Rew*, where it was said (23 Wall., 346):

"Whether direct taxes in the sense of the Constitution comprehend any other tax than a capitation tax and a tax on land, is a question not absolutely decided, nor is it necessary to determine it in the present case."

The question which was thus reserved for *Scholey v. Rew*, and which was presented for decision in the Pollock case, was decided in the latter case, the court holding that taxes on the income of real and personal property were the legal equivalent of a direct levy on the property from which the income was derived, and therefore required apportionment. But there was no intimation in the Pollock case that inheritance taxes—which had been held in *Scholey v. Rew* not to be direct, which

had from all time been considered as being imposed not on property, real or personal, as ordinarily understood, but as being levied on the transmission or receipt of property occasioned by death, and which had from the foundation of the Government been treated as a duty or excise—were direct taxes within the meaning of the Constitution. Undoubtedly, in the course of the opinion in the Pollock case, it was said that, if a tax was direct within the constitutional sense, the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement as to apportionment. But this language related to the subject matter under consideration, and was but a statement that a tax which was in itself direct, because imposed upon property solely by reason of its ownership, could not be changed by affixing to it the qualification of excise or duty. Here we are asked to decide that a tax is a direct tax on property which has at all times been considered the antithesis of such a tax—that is, has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy.

But it is asserted that it was decided in the income-tax cases that, in order to determine whether a tax be direct within the meaning of the Constitution, it must be ascertained whether the one upon whom by law the burden of paying it is first cast can thereafter shift it to another person. If he can not, the tax would then be direct in the constitutional sense, and, hence, however obvious in other respects it might be a duty, impost or excise, it can not be levied by the rule of uniformity and must be apportioned. From this assumed premise it is argued that death duties can not be shifted from the one on whom they are first cast by law, and, therefore, they are direct taxes requiring apportionment.

The fallacy is in the premise. It is true that in the income-tax cases the theory of certain economists by which direct and indirect taxes are classified with reference to the ability to shift the same was adverted to. But this disputable theory was not the basis of the conclusion of the court. The constitutional meaning of the word direct was the matter decided. Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons solely because of their general ownership of property from being levied by any other rule than that of apportionment, two things were decided by the court: First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived, and hence must be apportioned. These conclusions, however, lend no support to the contention that it was decided that duties, imposts, and excises which are not the essential equivalent of a tax on property generally, real or personal, solely because of its ownership, must be converted into direct taxes, because it is conceived that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fall. The proposition now relied upon was considered and refuted in *Nicol v. Ames* (173 U. S., 509), where the court said (p. 515):

“The commands of the Constitution in this, as in all other respects, must be obeyed; direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. But while yielding implicit obedience to these constitutional requirements, it is no part of the duty of this court to lessen, impede, or obstruct the exercise of the

taxing power by merely abstruse and subtle distinctions as to the particular nature of a specified tax, where such distinction rests more upon the differing theories of political economists than upon the practical nature of the tax itself.

"In deciding upon the validity of a tax with reference to these requirements, no microscopic examination as to the purely economic or theoretical nature of the tax should be indulged in for the purpose of placing it in a category which would invalidate the tax. As a mere abstract, scientific, or economical problem, a particular tax might possibly be regarded as a direct tax, when as a practical matter pertaining to the actual operation of the tax it might quite plainly appear to be indirect. Under such circumstances, and while varying and disputable theories might be indulged as to the real nature of the tax, a court would not be justified, for the purpose of invalidating the tax, in placing it in a class different from that to which its practical results would consign it. Taxation is eminently practical, and is, in fact, brought to every man's door, and for the purpose of deciding upon its validity a tax should be regarded in its actual, practical results, rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy."

Concluding, then, that the tax under consideration is not direct within the meaning of the Constitution, but, on the contrary, is a duty or excise, we are brought to consider the question of uniformity.

The contention is that because the statute exempts legacies and distributive shares in personal property below ten thousand dollars, because it classifies the rate of tax according to the relationship or absence of the relationship of the taker to the deceased, and provides for a rate progressing by the amount of legacy or share, therefore the tax is repugnant to that portion of the first clause of section 8 of Article I of the Constitution, which provides the "duties, imposts and excises shall be uniform throughout the United States."

The argument to the contrary, whilst conceding that the tax devised by the statute does not fulfill the requirement of equality and uniformity, as those words are construed when found in State constitutions, asserts that it does not thereby follow that the taxes in question are repugnant to the Constitution of the United States, since the provision in the Constitution that "duties, imposts and excises shall be uniform throughout the United States," it is insisted has a different meaning from the expression equal and uniform, found in State constitutions. In order to decide these respective contentions, it becomes at the outset necessary to accurately define the theories upon which they rest.

On the one side, the proposition is that the command that duties, imposts, and excises shall be uniform throughout the United States relates to the inherent and intrinsic character of the tax; that it contemplates the operation of the tax upon the property of the individual taxpayer, and exacts that when an impost, duty, or excise is levied it shall operate precisely in the same manner upon all individuals—that is to say, the proposition is that "uniform throughout the United States" commands that excises, duties, and imposts, when levied, shall be equal and uniform in their operation upon persons and property in the sense of the meaning of the words "equal and uniform," as now found in the constitutions of most of the States of the Union. The contrary construction is this: That the words "uniform throughout the United States" do not relate to the inherent character of the tax as

respects its operation on individuals, but simply requires that whatever plan or method Congress adopts for laying the tax in question, the same plan and the same method must be made operative throughout the United States—that is to say, that wherever a subject is taxed anywhere the same must be taxed everywhere throughout the United States, and at the same rate. The two contentions, then, may be summarized by saying that the one asserts that the Constitution prohibits the levy of any duty, impost, or excise which is not intrinsically equal and uniform in its operations upon individuals, and the other that the power of Congress in levying the taxes in question is by the terms of the Constitution restrained only by the requirement that such taxes be geographically uniform.

The argument as to intrinsic uniformity is asserted to find support in expressions used by some of the justices in the carriage tax case. (*Hylton v. United States*, 3 Dall., 171.) The statements thus referred to are as follows :

Mr. Justice Paterson said (p. 180) :

“Apportionment is an operation on States, and involves valuations and assessments, which are arbitrary, and should not be resorted to but in case of necessity. Uniformity is an instant operation on individuals, without the intervention of assessments or any regard to States, and is at once easy, certain, and efficacious.”

Mr. Justice Iredell said (p. 181) :

“If it can be considered as a tax, neither direct within the meaning of the Constitution, nor comprehended within the term duty, impost, or excise, there is no provision in the Constitution, one way or another, and then it must be left to such an operation of the power, as if the authority to lay taxes had been given generally in all instances, without saying whether they should be apportioned or uniform ; and in that case, I should presume, the tax ought to be uniform, because the present Constitution was particularly intended to affect individuals, and not States, except in particular cases specified. And this is the leading distinction between the Articles of Confederation and the present Constitution.”

And the following passage from the opinion in *United States v. Singer* (15 Wall., 111, 121) is also asserted to support the contention that a tax was imposed upon a distiller, in the nature of an excise, and the question arose whether in its imposition upon different distillers the uniformity of the tax was preserved, and the court said :

“The law is not in our judgment subject to any constitutional objection. The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of Congress in the imposition of taxes of this character is that they shall be uniform throughout the United States. The tax here is uniform it is operation—that is, it is assessed equally upon all manufacturers of spirits, wherever they are. The law does not establish one rule for one distiller and a different rule for another, but the same rule for all alike.”

In opposition to this view it is urged that the language used by the judges in the *Hylton* case was not intended to and does not, when properly understood, refer to the inherent character of the tax, but simply called attention to the fact that, differing from the Articles of Confederation, power was given to Congress by the Constitution to levy duties, imposts, and excises, thus acting upon individuals ; and that the language in the *Springer* case, whilst it uses the word equal, clearly referred,

not to an inherent uniformity, but to a geographical one. And this, it is argued, is rendered certain by the opinion in the Head Money cases (112 U. S., 580, 394), where, in considering the objection that a tax imposed upon the owners of steam vessels for each passenger landed at New York from a foreign port was void, because not levied by any rule of uniformity, the court, speaking by Justice Miller, said:

"The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this by ocean navigation, is uniform, and operates precisely alike in every port of the United States where such passengers can be landed."

To overcome the construction in favor of geographical uniformity asserted by the Government to arise from the language just quoted, it is, in the first place, argued that when correctly understood, it does not sustain the claim so based on it, and, in the second place, that if it does it is not binding as authority, because the Head Money cases involved, not the uniformity clause of the Constitution, but that portion of clause 6 of section 9 of Article I of the Constitution, which declares that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

It is conceded that, if the preference clause just referred to and the uniform clause have the same meaning, of course merely a geographical operation was intended. But it is insisted that the two clauses are distinct in import, and that the difference in language of the two manifests the distinct meanings which should be affixed to them. It is apparent that the controversy can not be disposed of by a mere reference to prior adjudications, since reliance is, by both sides, in effect, placed upon the same decisions. But to determine which view of the cited authorities is the correct one, it will become necessary not only to analyze the facts which were at issue in the decided cases, but also to elucidate the language of the opinions which have given rise to the conflicting constructions now placed upon such language, by an examination of the subjects to which the language related. As to do this calls for a critical consideration of the provisions of the Constitution referred to in the opinions relied on, we shall, for the moment, put the cases referred to out of mind, and consider the controversy presented as one of original impression. We are, moreover, impelled to this course from the fact that as the word "uniform," or the words "equal and uniform," are now generally found in State constitutions, and as there contained have been with practical unanimity interpreted by State courts as applying to the intrinsic nature of the tax and its operation upon individuals, if it be that the words "uniform throughout the United States," as contained in the Constitution of the United States, have a different significance, the reason for such conclusion should be carefully and accurately stated.

Considering the text, it is apparent that if the word "uniform" means "equal and uniform" in the sense now asserted by the opponents of the tax, the words "throughout the United States" are deprived of all real significance, and sustaining the contention must hence lead to a disregard of the elementary canon of construction which requires that effect be given to each word of the Constitution.

Taking a wider view, it is to be remembered that the power to tax contained in section 8 of Article I is to lay and collect "taxes, duties, imposts, and excises. * * * But all duties, imposts, and excises shall be uniform throughout the United States." Thus, the qualifica-

tion of uniformity is imposed, not upon all taxes which the Constitution authorizes, but only on duties, imposts, and excises. The conclusion that inherent equality and uniformity is contemplated involves, therefore, the proposition that the rule of intrinsic uniformity is applied by the Constitution to taxation by means of duties, imposts, and excises, and it is not applicable to any other form of taxes. It can not be doubted that in levying direct taxes, after apportioning the amount among the several States, as provided in clause 4 of section 9 of Article I of the Constitution, Congress has the power to choose the objects of direct taxation, and to levy the quota as apportioned directly upon the objects so selected. Even then, if the view of inherent uniformity be the true one, none of the taxes so levied would be subjected to such rule, as the requirement only relates to duties, imposts, and excises.

But the classes of taxes termed duties, imposts, and excises, to which the rule of uniformity applies, are those to which the principle of equality and uniformity in the sense claimed, is in the nature of things the least applicable and least susceptible of being enforced. Excises usually look to a particular subject, and levy burdens with reference to the act of manufacturing them, selling them, etc. They are or may be as varied in form as are the acts or dealings with which the taxes are concerned. Impost duties take every conceivable form, as may by the legislative authority be deemed best for the general welfare. They have been at all times often specific. They have sometimes been discriminatory, particularly when deemed necessary by reason of the tariff legislation of other countries. The claim of intrinsic uniformity, therefore, imputes to the framers a restriction as to certain forms of taxes, where the restraint was least appropriate and the omission where it was most needed. This discord which the construction, if well founded, would create, suggests at once the unsoundness of the proposition, and gives rise to the inference that the contrary view by which the unity of the provisions of the Constitution is maintained must be the correct one. In fact, it is apparent that if imposts, duties, and excises are controlled by the rule of intrinsic uniformity, the methods usually employed at the time of the adoption of the Constitution in all countries in the levy of such taxes would have to be abandoned in this country, and, therefore, whilst nominally having the authority to impose taxes of this character, the power to do so would be virtually denied to Congress.

Now, that the requirement that direct taxes should be apportioned among the several States contemplated the protection of the States, to prevent their being called upon to contribute more than was deemed their due share of the burden, is clear. Giving to the term uniformity as applied to duties, imposts, and excises a geographical significance, likewise causes that provision to look to the forbidding of discrimination as between the States, by the levying of duties, imposts, or excises upon a particular subject in one State, and a different duty, impost, or excise on the same subject in another; and, therefore, as far as may be, is a restriction in the same direction and in harmony with the requirement of apportionment of direct taxes. And the conclusion that the possible discrimination against one or more States was the only thing intended to be provided for by the rule which uniformity imposed upon the power to levy duties, imposts, and excises, is greatly strengthened by considering the state of the law in the mother country and in the colonies, and the practice of taxation which obtained at or about the time of the adoption of the Constitution.

In England, nowhere had the conception of a limitation on the power to levy duties, imposts, and excises by an intrinsic rule of uniformity found utterance, and the practice which had obtained, it may be said, was commonly to the contrary. Passing without special notice the system of customs (import and export) duties existing in England from a time long prior to the Revolution, which was replete with examples of taxation not fulfilling the requirement of intrinsic equality and uniformity, we briefly refer to a few examples of the same nature afforded by statutes imposing internal taxation in the mother country.

Internal taxation, in the form of excises, was introduced into England by a Parliamentary resolution passed on March 28, 1643, and carried into effect by an ordinance of the same date. (2 Dowell, History of Taxation, 9.) Many of these excises were imposed with reference to the supposed ability of the party whose property, office, etc., was assessed to pay the same. Thus, in 1747, a duty of excise was imposed upon coaches and other carriages kept for personal use. (20 Geo. II, ch. 10; 19 Stat. 31.) In 1756 a duty of excise was imposed upon the possessor of plate over a certain weight. (— Geo. II, ch. 14; 21 Stat., 388.) In 1758 all offices of profit, other than naval and military, were subjected to the payment of duty *when the salary exceeded one hundred pounds*. (30 Geo. II, ch. 22.) In 1777 a duty was imposed upon employers of coachmen and other men servants. (15 Geo. III, ch. 29; 31 Stat., 372.) In 1779 a duty was imposed, not upon all forms of locomotion, but upon traveling by post, the usual method of locomotion among the wealthier classes. (19 Geo. III, ch. 51; 32 Stat., 279.) In 1784 a duty was laid, not uniformly with respect to all horses kept by a person, but in respect to horses kept for the saddle or driving in carriages. (24 Geo. III, ch. 31; 34 Stat., 535.)

It is accurate to say that in the colonies prior to the Confederation, and in the States prior to the time of the adoption of the Constitution, the wisdom of restraining the levy of duties, imposts, and excises by an express requirement of inherent equality and uniformity had likewise nowhere found expression. The State constitutions of the revolutionary period (except, perhaps, those of Massachusetts and New Hampshire) contained no provisions indicating an intent to control the bodies authorized to levy taxes and raise money in the exercise of a sound discretion as to the mode to be adopted in levying taxation. The people were content to commit to their representatives the enactment of reasonable and wholesome laws, being satisfied with the protection afforded by a representative and free government and by the general principles of the common law protecting the inalienable rights of life, liberty, and property.

The Massachusetts constitution of 1780 and that of 1788 of New Hampshire merely required that the assessments of rates and taxes should be proportional and reasonable and with a view to equality, but there was no such qualification expressed as to the authority conferred "to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise and commodities whatsoever, brought into, produced, manufactured or being within the same."

In taxing laws of the original States prior to the convention of 1787, exemptions were allowed from a consideration of what was deemed best for the general welfare, and taxes were frequently laid from a consideration of the presumed ability of the owner to pay the tax. Discriminations and exemptions were also contained in various State taxing laws, which illustrate the discretion vested in the legislative bodies of the

States in the latter part of the eighteenth century. We print in the margin a few examples. (a)

It can not be, therefore, supposed that the framers of the Constitution, in using the words "uniform throughout the United States," contemplated to confer the power to levy duties, imposts, and excises, and yet to accompany this grant of authority with a restriction which had never found expression as to such taxes at that time anywhere, and which was contrary to the practice which had uniformly obtained both in the mother country and in the colonies, and in the States prior to the adoption of the Constitution. But one of the most satisfactory answers to the argument that the uniformity required by the Constitution is the same as the equal and uniform clause which has since been embodied in so many of

a In chapter 5 of the Pennsylvania Statutes, of March 27, 1782, a tax was laid upon "Negro and mulatto servants above the age of twelve years; horses, mares, and cattle, above three years old; coaches and carriages kept by any person for his or her own use, and for the purpose of traveling or pleasure." The chaises or riding chairs of ministers of the gospel, the president, professors, or tutors of Harvard college, or grammar school masters, were exempt from duty of excises laid upon certain described coaches and other carriages, by an act passed in Massachusetts on July 10, 1783.

In a law of 1784, at page 131 of the Laws of Connecticut, the listers were required in the list of polls and ratable assets of the inhabitants of the respective counties to list polls from 21 to 70 years of age at eighteen pounds, and polls from 16 to 21 years old at nine pounds; houses were to be listed, not uniformly, but according to the number of fireplaces; attorneys at law and physicians and surgeons were to be listed, the least practitioner at a certain sum, and larger practitioners higher in proportion; shopkeepers or traders, the lowest class at twenty-five pounds, and all others in due proportion; and each allowed and licensed tavern keeper was to be set at fifteen pounds, and to be added to in proportion to their situation and profits, according to the best judgment of the listers; and persons following any "mechanical art or mystery, such as blacksmiths, shoemakers, tanners, goldsmiths, or silversmiths," and all other works and occupations followed or pursued by any persons by which profits arise, except business in any public office, husbandry, and common labor for hire, were to be assessed by the best judgment of the listers.

The general assembly of New Jersey, by the act (ch. 400) December 22, 1783, for the purpose of raising ten thousand pounds for the support of government and the contingent expenses for the year 1784, enumerated a large number of items of persons and articles which were made taxable by the act, to be valued and rated by the assessors within stated sums. Single men who kept a horse were to be rated at not exceeding ten shillings, while single men who did not keep a horse were to be rated at not exceeding five shillings. Male slaves were to be taxed at not exceeding five shillings, but it was provided "That no slave is to be taxed who is unable to work, or that may appear to the assessors to be no profit to his master or mistress." Fisheries where fish were caught for sale, and sawmills that sawed timber for sale or hire, were to be rated not exceeding two pounds.

In South Carolina, by an act passed March 28, 1787 (6 Stat., 24), entitled "An act for raising supplies for the year 1787," a tax of nine shillings and four pence was laid upon free negroes and mulattoes from 16 to 50 years of age, while the tax upon free white men was, upon those neither lame or disabled, and who were between 21 to 50 years of age, while the tax was to be ten shillings per head. And a tax of one per cent was laid on the profits of faculties and professions, clergymen, schoolmasters, and schoolmistresses excepted.

In Delaware, by a law passed in the sixteenth year of the reign of George II (Laws of Delaware, Adams ed., pub. 1797, p. 257), and apparently in force when the Constitution of 1792 was adopted (*Id.*, pp. 396, 429), unsettled tracts and parcels of land were exempted from taxation, and the assessors were directed in assessing persons to have due regard "to such as are poor and have a charge of children," the poorer sort of such not to be rated under eight pounds. Single men without visible estate were to be rated at not less than twelve pounds nor more than twenty-four pounds, exempting, however, single men under twenty-one years of age, and apprentices and such as had not been out of apprenticeship more than six months.

the State constitutions, results from a review of the practice under the Constitution from the beginning. From the very first Congress down to the present date, in laying duties, imposts, and excises, the rule of inherent uniformity, or, in other words, intrinsically equal and uniform taxes, has been disregarded, and the principle of geographical uniformity consistently enforced. Take, for a general example, specific import duties, by which particular specific rates are imposed on enumerated articles, without reference to their value. It is manifest that all such duties are void, if intrinsic equality and uniformity be the rule, and yet in all the great controversies which have arisen over the policy of impost duties generally, and particularly as to the economic wisdom of specific duties, never has it been contended that the power to impose them did not exist because of the uniformity clause of the Constitution. So, also, mention may be made of the common form of the excises on distilled spirits with the tax per gallon without reference to the value thereof.

Indeed, tariff duties have not only varied with different articles, but have varied with the different valuations of the same article. We cite a few instances of the latter character, found in the tariff acts of August 5, 1861 (12 Stat., 293), and August 27, 1894 (28 Stat., 530), respectively. In the act of 1861 a duty was imposed—

“On all silks valued at not over one dollar per square yard, thirty per centum ad valorem; on all silks valued over one dollar per square yard, forty per centum ad valorem; on all silk velvets or velvets of which silk is the component material of chief value, valued at three dollars per square yard or under, thirty per centum ad valorem; valued at over three dollars per square yard, forty per centum ad valorem.”

In the act of 1894 occurs the following paragraph:

“280. On woolen and worsted yarns made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, valued at not more than forty cents per pound, thirty per centum ad valorem; valued at more than forty cents per pound, forty per centum ad valorem.”

So also a single paragraph of the tariff acts has frequently contained an elaborate system of minimum classifications and compound duties, as well as exemptions for importations below a certain value. See provisions discussed in *Arthur v. Victor* (127 U. S., 572, 575); *Hedden v. Robertson* (151 U. S., 520, 521); *Arthur v. Morgan* (112 U. S., 495, 498).

Nor can it be said that these illustrations relate to legislation enacted long after the adoption of the Constitution, when by lapse of time an erroneous conception as to the meaning of the Constitution had arisen, for the examples to which we have just referred, are but types of many forms of taxation by way of duties, imposts, and excises, which were enacted without question from the very beginning, and have continued in an unbroken line to the present time, sanctioned by the founders of our institutions and approved in practical execution by all the illustrious men who have directed the public destinies of the nation. Excise taxes were largely used during the administration of President Washington, and again during and after the war of 1812. It may properly be said of these excises that none of them were uniform according to the principles now contended for, yet no constitutional question in this regard was ever raised about them. A partial list of some of the earlier acts

is inserted in the margin. (a) We do not cite from the latter revenue acts because of the numerous and familiar instances of such legislation which abound therein.

The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution, in order thereby to be enabled to correctly interpret its meaning. (*Pollock v. Farmers' Loan and Trust Company*, 157 U. S., 558.)

The paralysis which the Articles of Confederation produced upon the Continental Congress because of the want of power in that body to enforce necessary taxation to sustain the Government needs no more than statement. And the proceedings of the Congress during the confederation afford abundant evidence of the constant effort which was made to overcome this situation by attempt to obtain authority from the States for Congress to levy the taxes deemed by it essential, and thus relieve it from the embarrassment occasioned by the fact that all demands for rev-

a Federal excises during the first generation after the Constitution.

I. *Washington's Administration.*

March 3, 1791, ch. 15, secs. 14, 15, on distilled spirits; not uniform or proportionate to strength. No tax on country distilleries using homemade materials.

May 8, 1792, ch. 22, sec. 1, on distilled spirits; country distillers taxed differently from those in cities, towns, and villages; sec. 11, no drawback on any quantity less than 100 gallons.

June 5, 1794, ch. 45, sec. 1, on carriages. Contains some exemptions. (Discussed in *Hylton v. United States*, 3 Wall., 171.)

June 5, 1794, ch. 48, on licenses for making certain sales of wines or foreign distilled spirituous liquors.

June 5, 1794, ch. 51, secs. 1, 2, on snuff and refined sugar; sec. 14, no drawback on any quantity less than \$12 worth. (Discussed in *Pennington v. Cox*, 2 Cranch, 33.)

June 9, 1794, ch. 65, sec. 1, on auction sales; with exemption of judicial sales, sales of goods distrained or in insolvency; and of sales of produce or land, when sold on the land where produced, etc.; and of sales "of any farming utensils, stock or household furniture by persons removing from the place of their former residence, where the amount * * * shall not exceed \$200."

March 3, 1795, ch. 43, sec. 1, on mortars and pestles, etc., in snuff mills; sec. 8, no drawback on any exports of snuff less than 300 lbs.

May 28, 1796, ch. 37, sec. 1, on carriages, with exemptions.

II. *Period of war of 1812.*

July 24, 1813, ch. 21, sec. 1, on refined sugar.

July 24, 1813, ch. 24, sec. 1, on carriages with exemptions.

July 24, 1813, ch. 25, sec. 1, on licenses for distilling liquors.

July 24, 1813, ch. 26, sec. 1, on auction sales; $\frac{1}{4}$ of 1 per cent on sales of vessels; 1 per cent on other sales of goods, etc., with exemptions.

August 2, 1813, ch. 39, sec. 4, on licenses for retailing wines, etc.; one rate for cities, towns, and villages, another for the country.

August 2, 1813, ch. 53, secs. 1, 2, on bank notes, etc., graduated but not ad valorem; commutable at $1\frac{1}{4}$ per cent on dividends.

December 15, 1814, ch. 12, sec. 1, on carriages, graduated but not ad valorem.

December 21, 1814, ch. 15, sec. 1, on distilled spirits.

December 23, 1814, ch. 16, sec. 1, on auction sales; sec. 3, on retailers' licenses.

January 18, 1815, ch. 22, sec. 1, on domestic manufactures. Various specific and ad valorem rates, with exemptions, as umbrellas under \$2, boots under \$5 a pair.

January 18, 1815, ch. 23, sec. 1, on household furniture kept for use (annual duty) with minimum of \$200, graduated but not ad valorem. The unit is the family; sec. 13, exemption of books, etc.; sec. 14, exemption of certain charitable, religious, or literary institutions.

February 27, 1815, ch. 61, on plate.

April 19, 1816, ch. 58, sec. 4, on licenses for distilling liquors.

venue depended for fulfillment wholly upon the action of the respective States. Despite the constant agitation as to the subject and the abundant discussions which took place in relation to it during the period of the confederation, in the whole of the proceedings not a word can be found which can give rise to even the suggestion that there was then any thought of restraining the taxing power with reference to the intrinsic operation of a tax upon individuals. On the contrary, the sole and the only question, which was ever present and in every form was discussed was the operation of any taxing power which might be granted to Congress upon the respective States; in other words, the discrimination as regards States which might arise from a greater or lesser proportion of any tax being paid within the geographical limits of a particular State.

The proceedings of the Continental Congress also makes it clear that the words "uniform throughout the United States," which were afterwards inserted in the Constitution of the United States, had, prior to its adoption, been frequently used, and always with reference purely to a geographical uniformity and as synonymous with the expression "to operate generally throughout the United States." The foregoing situation so thoroughly permeated all the proceedings of the Continental Congress that we might well rest content with their mere statement. We shall, however, make a few references on the subject.

The view that intrinsic uniformity was not then conceived is well shown by remarks by Mr. Wilson upon a proposition submitted by him to the Continental Congress on March 18, 1783 (5 Ell. Deb., 67), that Congress be empowered to lay and impose "a tax of one-quarter of a dollar per hundred acres on all located and surveyed lands within each of the States." He said, speaking of the proposed tax, "that it was more moderate than had been paid before the Revolution, and it could not be supposed the people would grudge to pay, as the price of their liberty, what was formerly paid to their oppressors."

As early as February, 1781, a resolution was proposed authorizing Congress to levy certain taxes and duties, which resolution contained the proviso, "and the same articles shall bear the same duty and impost throughout the said States without exemption." (1 *Ib.*, 92.)

Though this resolution failed of passage, a report of the Committee of the Whole was agreed to on the same day, in the form of a resolution recommended to the several States to levy for the use of the United States a duty of 5 per cent upon imports, with certain exceptions, and a duty of 5 per cent upon all prizes and prize goods. As late as December, 1782, however, some of the States had failed to comply with this resolution. (5 Ell. Deb., 13.)

On January 25, 1783 (5 *Ib.*, 31), a resolution was proposed declaring that Congress would "make every effort in their power to obtain, from the respective States, *general* and substantial funds adequate to the object of funding the whole debt of the United States; * * * ." The word "general" was stricken out, because susceptible of being considered as implying that every object of taxation within the States should be embraced—that is to say, in order to remove any impression that the word "general" might imply the obligation to levy on all articles, the phraseology of the previous resolution was changed so as to cause the word to have merely a geographical significance, viz, to require that whatever subject of taxation was assessed, the same subject should be taxed in every State, or, in other words, that the particular tax should operate generally throughout the United States. Two days later, a new resolution having been introduced declaring it to be the

opinion of Congress that *general* funds should be established, to be collected by Congress, the same objection was repeated (*Ib.*, 34), and the proposition was amended so as to read "establishment of permanent and adequate funds to operate generally throughout the United States." There being controversy as to whether Congress should be allowed to collect the taxes (*Ib.*, 34), the debates record the following proceedings:

"On the motion of Mr. Madison, the whole proposition was new modeled, as follows:

"That it is the opinion of Congress that the establishment of permanent and adequate funds, to operate generally throughout the United States, is indispensably necessary for doing complete justice to the creditors of the United States, for restoring public credit, and for providing for the future exigencies of the war."

"The words 'to be collected under the authority of Congress' were, as a separate question, left to be added afterwards."

Mr. Madison, after commenting on the demerits of the plans just referred to, prefaced his subsequent remarks with the following (*Ib.*, 36): "It remains to examine the merits of a plan of general revenue operating throughout the United States, under the superintendence of Congress."

On March 11, 1783 (5 Ell. Deb., 64), a vote was taken upon three questions, the first being, "Shall any taxes, to operate generally throughout the States, be recommended by Congress, other than duties on foreign commerce?" The matter culminated on April 18, 1783, in the adoption of a resolution by nine States, recommending to the several States that Congress be vested with the power to levy, for the use of the United States, certain duties, as well specific as ad valorem, upon goods imported into the States from any foreign port, island, or plantation. (*Ib.*, 93.)

In an address which submitted the resolution to the States it was observed (*Ib.*, 97):

"To render this fund as productive as possible, and, at the same time, to narrow the room for collusions and frauds, it has been judged an improvement of the plan to recommend a liberal duty on such articles as are most susceptible of a tax according to their quantity, and are of most equal and general consumption, leaving all other articles, as heretofore proposed, to be taxed according to their value."

It was also stated in the address that "to bring this essential resource (a tax on imposts) into use * * * a concerted *uniformity* was necessary;" and "that this *uniformity* can not be concerted through any channel so properly as through Congress."

Thus it is apparent that the expression "uniform throughout the United States" was at that time considered as purely geographical, as being synonymous with the expression "general operation throughout the United States," and that no thought of restricting Congress to intrinsic uniformity obtained, since the powers recommended were absolutely in conflict with such theory.

The reasons advanced by those who opposed the various resolutions to which we have referred are, if anything, more decisive than are the matters to which we have called attention. Those reasons were predicated upon the inequality among the States which might arise from the granting to Congress the power to lay duties, imposts, and excises—that is, if a particular article was levied on generally throughout the various States by an excise or duty, as a greater quantity of that article might be found in one State than in other States, it was asserted the

burden would be unequal because the former State would pay a greater proportion of the tax. This form of objection is well illustrated by what was said by Mr. Rutledge and Mr. Lee against the grant of power to Congress to lay duties or excises, to operate generally throughout the United States. We quote from 5 Ell. Deb., page 34, as follows :

“ Mr. Rutledge objected to the term ‘ *generally*,’ as implying a degree of *uniformity* in the tax which would render it unequal. He had in view, particularly, a land tax, according to quality (quantity? See note p. 37), as had been proposed by the office of finance.

* * * * *

“ Mr. Lee seconded the opposition to the term ‘ *general*.’ He contended that the States would never consent to a uniform tax, because it would be unequal.”

Again (*Ib.*, 37), Mr. Rutledge complained “ that those who so strenuously urged the necessity and competency of a general revenue, operating throughout all the United States at the same time, declined specifying any general objects from which such a revenue could be drawn.” And the same reason was urged for refusing the authority to lay imposts throughout the United States, as is shown by the objections made, to which we shall now refer. Thus, with respect to duty on imported salt, it was argued that it would bear injuriously on the Eastern States “ on account of salt consumed in the fisheries, and that besides it would be injurious to the national interest by adding to the cost of fish.” (5 Ell. Deb., 61.) So, also, Rhode Island protested against the grant of the power to impose duties recommended by the resolution of April 18, 1783, previously referred to, on the ground “ that the proposed duty would be unequal in its operation, bearing hardest upon the most commercial States, and so would press peculiarly hard upon that State which draws its chief support from commerce.” (1 Ell. Deb., 101.) And the nature of this objection caused it to come to pass that in the subsequent discussions in Congress the claim that it was essential to confer upon Congress the authority to lay duties, imposts, and excises to be uniform throughout the United States became associated in the discussion with the asserted necessity that Congress should have the power to establish uniform regulations of commerce to prevent the discrimination resulting from the laying of duties, imposts, and excises by the respective States. (1 *Ib.*, 112.) The association of the two subjects evolved by their natural relation is well shown by a resolution of Mr. Madison, introduced in the Virginia house of delegates in 1784 (*Ib.*, 114), “ wherein it was proposed that the delegates from the State of Virginia should be instructed to propose in Congress a recommendation to the States in Union, to authorize that assembly to regulate their trade,” on principles and under qualifications stated in the following paragraphs :

“ First. That the United States in Congress assembled be authorized to prohibit vessels belonging to any foreign nation from entering any of the ports thereof, or to impose any duties on such vessels and their cargoes which may be judged necessary ; all such prohibitions and duties to be *uniform throughout the United States*, and the proceeds of the latter to be carried into the treasury of the State within which they shall accrue.

“ Second. That no State be at liberty to impose duties on any goods, wares, or merchandise, imported, by land or by water, from any other State, but may altogether prohibit the importation from any State of any particular species or description of goods, wares, or merchandise,

of which the importation is at the same time prohibited from all other places whatsoever."

It will be noticed that the words "uniform throughout the United States" are the same which were subsequently adopted in the clause of the Constitution under consideration, and that the term uniformity, in the resolution of Mr. Madison, was applied not only to duties, but to *regulations and prohibitions respecting external commerce*, which were designed to be the same all over the Union.

Though the resolution of Mr. Madison was not adopted, it led to the sending by Virginia of commissioners to Annapolis to meet commissioners from the other States, the result of which meeting was the Federal convention of 1787.

Considering the proceedings of the convention, the same observation is pertinent which we have previously made as to the Continental Congress, viz, that, despite the struggles and controversies which environed the final adoption of the Constitution, not a single word is found in any of the debates, or in any of the proceedings or historical documents cotemporaneous and concurrent with the adoption of the Constitution, which give slightest intimation that any suggestion was ever made that the grant of power to tax was considered from the point of view of its operation upon the individual. The struggles which were flagrant in the Continental Congress were transferred to the convention. The question of the undue proportion of taxation which might fall upon one or more States if direct taxes were laid was solved by the principle of apportionment of direct taxes, duties, imposts, and excises, were only subjected to the requirement of uniformity throughout the United States, these words, as we have shown, having acquired at that time an unquestioned meaning.

Without going into minute detail, the mention of a few salient particulars will serve to show how the result of the convention brought together the provisions as to the uniformity of duties, imposts, and excises throughout the United States and the restriction against discriminating commercial regulations by Congress, just as they had by the force of circumstances been drawn together in the Continental Congress, and how their solution in the Constitution was substantially in accord with the resolution of Mr. Madison, introduced into the Virginia house of delegates, to which we have referred.

The draft of a Federal Constitution, submitted to the convention by Mr. Pinckney, provided in the first and second paragraphs as follows (*Ib.*, 130):

"Art. VI. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

"To regulate commerce with all nations and among the several States;

* * * * *

"The proportion of direct taxation shall be regulated by the whole number of inhabitants of every description, which number shall, within — years after the first meeting of the legislature, and within the term of every — year after, be taken in the manner to be prescribed by the legislature.

"No tax shall be laid on articles exported from the States; nor capitation tax, but in proportion to the census before directed."

No other provision was made respecting taxation.

The plan of Mr. Paterson, of New Jersey, provided, in addition to

the powers vested in Congress by the Articles of Confederation (p. 191), that Congress should be authorized—

“To pass acts for raising a revenue, by levying a duty or duties on all goods and merchandise of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum or parchment, and by a postage on all letters and packages passing through the general post-office—to be applied to such Federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same from time to time to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and commerce, as well with foreign nations as with each other.”

By another section of the Paterson plan, it was provided that whenever requisitions upon the States should be necessary, they should be made by the rule of numbers and not by value of land, as under the confederation; and the Congress was to be authorized “to devise and pass acts” directing and authorizing the collection of requisitions when not complied with. It is thus seen that both of the plans referred to made no provision for uniformity of taxation in the sense contended for by the opponents of the tax now under consideration. The committee of detail, in the first section of Article VII of their draft of a proposed constitution, reported the two clauses of the plan of Mr. Pinckney first quoted, submitting the word “foreign” for the word “all” before the word “nations.” (5 Ell. Deb., 378.)

On August 25, 1787, the following occurred (*Ib.*, 478):

“Mr. Carroll and Mr. L. Martin expressed their apprehensions, and the probable apprehensions of their constituents, that, under the power of regulating trade, the general legislature might favor the ports of particular States, by requiring vessels destined to or from other States to enter and clear thereat, as vessels belonging or bound to Baltimore, to enter and clear at Norfolk, etc. They moved the following proposition:

“‘The legislature of the United States shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or *paying duties or imposts in one State in preference to another.*’”

On the same day Mr. McHenry and General Pinckney submitted a proposition (which was referred *nem. con.* to a committee) relating to the establishment of new ports in the States for the collection of duties or imposts, which concluded as follows (p. 479):

“All duties, imposts and excises, prohibitions or restraints, laid or made by the legislature of the United States, *shall be uniform and equal throughout the United States.*”

The fourth section of the seventh article of the proposed constitution reported by the committee on detail, on August 6, 1787, read as follows (p. 379):

“SEC. 4. No tax or duty shall be laid by the legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.”

The committee to whom these propositions were referred made a report on August 28, in effect embodying both propositions in one paragraph, as follows (*Ib.*, 483):

"That there be inserted, after the fourth clause of the seventh section, 'nor shall any regulation of commerce or revenue *give preference to the ports of one State over those of another*, or oblige vessels bound to or from any State to enter, clear or pay duties, in another; and all *tonnage, duties, imposts and excises*, laid by the legislature, *shall be uniform throughout the United States.*'"

It will be noticed that the committee recommended, not merely that preferences between ports should be forbidden by "any regulation of commerce," but also that such preferences should not be made by "any regulation of revenue." This, obviously, rendered it unnecessary to include, in the latter part of clause, "prohibitions or restraints," as proposed by Mr. McHenry and General Pinckney. The substantial effect of the first clause of the paragraph was to require that all regulations of commerce or of revenue affecting commerce through the ports of the States should be the same in all ports.

It follows from the collocation of the two clauses that the prohibition as to preferences in regulations of commerce between ports and the uniformity as to duties, imposts, and excises, though couched in different language, had absolutely the same significance. The sense in which the word "uniform" was used is shown by the fact that the committee, whilst adopting in a large measure the proposition of Mr. McHenry and General Pinckney, "that all duties, imposts, excises, prohibitions, or restraints * * * shall be uniform and equal throughout the United States," struck out the words "and equal." Undoubtedly this was done to prevent the implication that taxes should have an equal effect in each State. As we have seen, the pith of the controversy during the Confederation was that even, although the same duty or the same impost or the same excise was laid all over the United States, it might operate unequally by reason of the unequal distribution or existence of the article taxed among the respective States.

On August 31, 1797, the report of the committee was acted upon as follows (5 Ell. Deb., 507): The provision, "Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another," was adopted *nem. con.* After discussion, the clause, "or oblige vessels bound to or from any State to enter, clear or pay duties in another," was agreed to. Quoting from the debates at page 503:

"The word 'tonnage' was struck out *nem. con.*, as comprehended in 'duties.'

"On the question on the clause of the report—'and all duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States'—it was agreed to *nem. con.*"

In a footnote, it is said:

"In the printed journal, New Hampshire and South Carolina entered in the negative."

On September 4, 1787, the committee to whom sundry resolutions, etc., had been referred on August 31, recommended, among others, the following addition and alteration to the report before the convention (pp. 506 to 507):

"1. The first clause of article 7, section 1, to read as follows: 'The legislature shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.'

"2. At the end of the second clause of article 7, section 1, add, 'and with the Indian tribes.'"

The committee of style, on September 12, 1787, reported a plan of the Constitution (p. 535), the foregoing provision conferring authority to lay taxes, etc., being designated as section 8 of article 1.

On September 14, 1783, the words "But all such duties, imposts, and excises shall be uniform throughout the United States," which, in their adoption, had been associated with and formed but a part of the clause forbidding a preference in favor of the port of one State over the port of another State—in other words, had been a part of another clause—were shifted, by a unanimous vote, from that paragraph, and were annexed to the provisions granting the power to tax.

Thus, it came to pass that although the provisions as to preference between ports and that regarding uniformity of duties, imposts, and excises were one in purpose, one in their adoption, they became separated only in arranging the Constitution for the purpose of style. The first now stands in the Constitution as a part of the sixth clause of section 7 of Article I, and the other is a part of the first clause of section 8 of Article I. By the result, then, of an analysis of the history of the adoption of the Constitution it becomes plain that the words "uniform throughout the United States" do not signify an intrinsic but simply a geographical uniformity. And it also results that the assertion to which we at the outset referred, that the decision in the Head Money cases, holding that the word "uniform" must be interpreted in a geographical sense, was not authoritative, because that case in reality solely involved the clause of the Constitution forbidding preferences between ports, is shown to be unsound, since the preference clause of the Constitution and the uniformity clause were, in effect, in framing the Constitution, treated, as respected their operation, as one and the same thing, and embodied the same conception.

We add that those who opposed the ratification of the Constitution clearly understood that the uniformity clause as to taxation imported but a geographical uniformity, and made that fact a distinct ground of complaint. Thus in the report made to the legislature of Maryland by Luther Martin, attorney-general of the State, detailing and commenting upon the proceedings of the convention of 1787, of which convention Mr. Martin was a delegate, in the course of comments upon the tax clause of the Constitution, Mr. Martin said (1 *ib.*, 369):

"Though there is a provision that all duties, imposts, and excises shall be uniform—that is, *to be laid to the same amount on the same articles in each State*—yet this will not prevent Congress from having it in their power to cause them to fall very unequally and much heavier on some States than on others, because these duties may be laid on articles but little or not at all used in some other States, and of absolute necessity for the use and consumption of others; in which case the first would pay little or no part of the revenue arising therefrom, while the whole or nearly the whole of it would be paid by the last, to wit, the States which use and consume the articles on which imposts and excises are laid."

Having disposed of the question of uniformity, we are next brought to consider certain contentions which relate to that subject. It is argued that even although it be conceded that the uniformity required by the Constitution is only a geographical one, the particular law in question does not fulfill the requirements of even geographical unifor-

mity, since it does not apply to the District of Columbia. We think this contention is without merit.

The proposition is predicated upon the fact that the statute purports to lay the tax upon legacies and distributive shares "passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory;" and provides that the receipt for the tax will entitle an administrator, etc., to credit to the amount of the payment made to the collector "by any tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide and settle the accounts of executors and administrators."

This, it is asserted, does not embrace the District of Columbia. Without attempting to determine whether the necessary construction of the statute would require the inclusion of the District of Columbia within its terms, aside from any special provision bearing upon the question, we think the provisions of section 31 of the act makes the objection untenable. That section provides as follows (30 Stat., 466):

"SEC. 31. That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed, are hereby made applicable to this act."

The result of this provision is to carry into the law under review the provisions of section 3140 of the Revised Statutes, relating to internal-revenue laws generally. It is as follows:

"3140. The word 'State,' when used in this title, shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out its provisions."

It is yet further asserted that the tax does not fulfill the requirements of geographical uniformity, for the following reason: As the primary rate of taxation depends upon the degree of relationship or want of relationship to a deceased person, it is argued that it can not operate with geographical uniformity, inasmuch as testamentary and intestacy laws may differ in every State. It is certain that the same degree of relationship or want of relationship to the deceased, wherever existing, is levied on at the same rate throughout the United States. The tax is hence uniform throughout the United States, despite the fact that different conditions among the States may obtain as to the objects upon which the tax is levied. The proposition in substance assumes that the objects taxed by duties, imposts, and excises must be found in uniform quantities and conditions in the respective States, otherwise the tax levied on them will not be uniform throughout the United States. But what the Constitution commands is the imposition of a tax by the rule of geographical uniformity, not that in order to levy such a tax objects must be selected which exist uniformly in the several States. Indeed, the contention was substantially disposed of in the License Tax Cases (5 Wall., 472), previously referred to. It was there urged that as the several States had the right to forbid the carrying on of the liquor traffic, therefore Congress had no power to license such traffic, because it would interfere with the authority of the State. It was held that the license was validly imposed, that it did not interfere with the power of the States to prevent the liquor traffic, because in a State where such traffic was forbidden the license would be inoperative; but in the States where such traffic was allowed, the license would be effective. The argument, however, is additionally fully answered by the review which we have made of the origin and meaning of the expression "uniform throughout the United States." From that review it appears that the very objection upon which the proposition now

advanced must rest was urged in the Continental Congress as the reason why the levy of uniform duties, imposts, and excises throughout the United States should not be authorized. This is shown by the objection of Mr. Rutledge and the suggestion of Mr. Lee. It is further shown by the protest of Rhode Island, and the reasons advanced why a duty on salt should not be levied. But it was seen that if it were required, not only that the duties, imposts, and excises should be uniform throughout the United States, but that in imposing them objects should be selected existing in equal quantity in the several States, the grant of power to levy duties, imposts, and excises would be a failure. In the convention which framed the Constitution the same argument was used without success, and, as we have seen, the only ground upon which the striking out of the words "and equal" after the word "uniform," in the adoption of the clause as now found in the Constitution, can be reasonably explained, is that it was done to prevent the implication that the duties, imposts, and excises which were to be uniform throughout the United States were to be placed upon rights equally existing in the several States. To now adopt the proposition relied on would be virtually, then, to nullify the action of the convention, and would relegate the taxing power of Congress to the impotent condition in which it was during the Confederation.

Lastly, it is urged that the progressive rate feature of the statute is so repugnant to fundamental principles of equality and justice that the law should be held to be void, even although it transgresses no express limitation in the Constitution. Without intimating any opinion as to the existence of a right in the courts to exercise the power which is thus invoked, it is apparent that the argument as to the enormity of the tax is without merit. It was disposed of in *Magoun v. Illinois Trust and Savings Bank* (170 U. S., 293).

The review which we have made exhibits the fact that taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the Government. So, also, some authoritative thinkers, and a number of economic writers, contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial. The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so. That the law which we have construed affords no ground for the contention that the tax imposed is arbitrary and confiscatory is obvious.

It follows from the foregoing opinion that the court below erred in denying all relief, and that it should have held the plaintiff entitled to recover so much of the tax as resulted from taxing legacies not exceeding ten thousand dollars, and from increasing the tax rate with reference to the whole amount of the personal estate of the deceased from which the legacies or distributive shares were derived. For these reasons the judgment below must be reversed and the case be remanded, with

instructions that further proceedings be had according to law and in conformity with this opinion; and it is so ordered.

Mr. Justice Brewer dissents from so much of the opinion as holds that a progressive rate of tax can be validly imposed. In other respects, he concurs.

Mr. Justice Peckham took no part in the decision.

SUPREME COURT OF THE UNITED STATES.—No. 489.—OCTOBER TERM, 1899.

Harry Plummer, as Executor of the Last Will and Testament of Joseph Plummer, Plaintiff in Error v. Bird S. Coler, Comptroller of the City of New York.

In error to the surrogate's court of the county of New York, State of New York.

[May 14, 1900.]

Joseph Plummer, a citizen and resident of New York, died October 28, 1898, leaving a last will whereby he bequeathed to Harry Plummer, his executor, forty thousand dollars in United States bonds, issued under the funding act of 1870, in trust, to hold the same during the lifetime of Ella Plummer Brown, daughter of the testator, and to pay the income thereof to her during her life, and at her death to divide the same between and amongst her issue then living.

The value of this life interest was computed by the appraisers at the sum of \$16,120, and a tax of \$161.20 was imposed thereon by the surrogate of the county of New York. From this appraisal and the order imposing the tax an appeal was taken to the surrogate's court of the county and State of New York, where the following stipulation was filed:

"It is stipulated and agreed by and between the attorneys for the respective parties to the above-entitled proceedings that the forty thousand dollars in amount at par of bonds of the United States of America, of which the said Joseph Plummer died possessed, and upon the interest in which of Ella Plummer Brown a tax of \$161.20 was fixed, assessed, and determined by the order appealed from, consist of four per cent bonds issued in the year 1877 and due in the year 1907, under and by virtue of and pursuant to the statute of the United States, passed July 14, 1870, entitled 'An act to authorize the refunding of the national debt,' which authorized the Secretary of the Treasury, among other things, to issue various classes of bonds in the sums therein mentioned, including 'a sum or sums not exceeding in the aggregate one thousand million dollars of like bonds, * * * payable at the pleasure of the United States after thirty years from the date of their issue, and bearing interest at the rate of four per centum per annum; all of which said several classes of bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the said bonds shall have set forth and expressed upon their face the above specified conditions;' and that pursuant to said statute there is set forth on the face of each of said bonds the following clause—that is to say, 'The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority.'"

On December 22, 1899, the surrogate's court affirmed the appraisal and the order imposing a tax. Thereupon Harry Plummer, executor, appealed to the appellate division of the supreme court of the State of

New York, which court, on January 5, 1900, affirmed the order of the surrogate and the decree of the surrogate's court. From this decree of the appellate division of the supreme court an appeal was taken to the court of appeals of the State of New York, where, on January 8, 1900, the proceedings and order of the surrogate and the decree of the appellate division were affirmed.

In the notice of appeal to the surrogate's court and in that of the appeal to the court of appeals the grounds of appeal were stated to be the invalidity of the statute of New York purporting to impose a tax upon a transfer by legacy of bonds of the United States, and the invalidity of the statute of the State of New York and of the authority exercised thereunder by the appraiser and the surrogate, in so far as United States bonds were concerned. And the appellant specially set up and claimed a title, right, privilege, and immunity under the Constitution of the United States, and under the statute of the United States in respect to the exemption of said bonds from State taxation in any form.

On January 9, 1900, a writ of error was sued out from this court.

Mr. Justice SHIRAS delivered the opinion of the court.

In this case we are called upon to consider the question whether, under the inheritance tax laws of a State, a tax may be validly imposed on a legacy consisting of United States bonds issued under a statute declaring them to be exempt from State taxation in any form.

It is not open to question that a State can not, in the exercise of the power of taxation, tax obligations of the United States. (*Weston v. City of Charleston*, 2 Pet., 449; *Bank of Commerce v. New York City*, 2 Black, 620; *Home Insurance Company v. New York*, 134 U. S., 598.)

So, likewise, it is settled law that bonds issued by a State, or under its authority by its public municipal bodies, are not taxable by the United States. (*Mercantile Bank v. New York*, 121 U. S., 138; *Pollock v. Farmers' Loan and Trust Company*, 157 U. S., 429, 583.)

The reasoning upon which these two lines of decision proceed is the same, namely, as was said by Mr. Justice Nelson in *Collector v. Day* (11 Wall., 113, 124): "The General Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme, but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the General Government as that Government within its sphere is independent of the States;" and, as was said by Mr. Chief Justice Fuller, in *Pollock v. Farmers' Loan and Trust Company* (157 U. S., 537): "As the States can not tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State."

As, then, for the reasons advanced and applied in the previous cases, it is not within the power of a State to tax Federal securities, it was not necessary for Congress, in order to secure such immunity, to declare in terms, in the act of July 14, 1870, and on the face of the bonds issued thereunder, that the principal and interest were exempt from taxation in any form by or under State, municipal, or local authority. Such a declaration did not operate to withdraw from the States any power or

right previously possessed, nor to create, as between the States and the holders of the bonds, any contractual relation. It doubtless may be regarded as a legitimate mode of advising purchasers of such bonds of their immunity from State taxation, and of manifesting that Congress did not intend to waive this immunity, as it had done in the case of national banks, which are admittedly governmental instrumentalities.

With these concessions made, we are brought to the pivotal question in the case, and that question is thus presented in the second point discussed in the brief filed for the plaintiff in error. "If the question of the right of the State to impose the tax now in question be considered merely with reference to the inherent lack of power of the State to impose such a tax, because of the provisions of the Constitution of the United States bearing upon that question, without any aid from the statute of the United States under which these bonds were issued, or the exemption clause contained in the bonds, we conceive it to be entirely clear that the tax in question is unconstitutional, because impairing and burdening the borrowing power of the United States." Or, as stated elsewhere in the brief: "The States have no power to impose any tax or other burden which would have the effect to prevent or hinder the Government of the United States from borrowing such amounts of money as it may require for its purposes, on terms as beneficial and favorable to itself, in all respects, as it could do if no such tax were imposed by the State."

It will be observed that these propositions concede that the tax law of the State of New York in question does not expressly, or by necessary implication, propose to tax Federal securities. It is only when and if, in applying that law to the estates of decedents, such estates are found to consist wholly or partly of United States bonds, that the reasoning of the plaintiff in error, assailing the validity of the statute, can have any application. And the contention is that individuals, in forming or creating their estates, will or may be deterred from offering terms, in the purchasing of such bonds, as favorable as they otherwise might do, if they are bound to know that such portion of their estates as consists of such bonds is to be included, equally with other property, in the assessment of an inheritance tax.

Before addressing ourselves directly to the discussion of these propositions we shall briefly review the decisions in whose light they must be determined.

And, first, what is the voice of the State courts?

A detailed examination of the State decisions is unnecessary, because it is admitted, in the brief of the plaintiff in error, that in many, if not in most, of the States of the Union inheritance or succession tax laws, similar to the New York statute in question, are and have been long in operation, and that the question of their validity, in cases like the present, has always heretofore been determined by the State courts against the United States. We can not, however, accede to the suggestion in the brief that the State decisions are entitled to but little consideration, for the reason that "they are the determinations of a distinct sovereignty, adjudicating upon the rights of the nation, and naturally jealous of their own." Undoubtedly, in a case like the present, the national law is paramount, and its final exposition is for this court. Still, for reasons too obvious to require statement, the decisions of the State courts, particularly if they are uniform and concur in their reasoning, are worthy of respectful consideration, even if the question be, at last, a Federal one.

Without attempting a rehearsal of the State decisions, we may profitably examine the reasons and conclusions of several of the leading State courts.

A statute of Massachusetts of 1862 provided that every institution for savings, incorporated under the laws of that State, should pay a tax on account of its depositors, on the average amount of its deposits. The Provident Institution of Savings, a corporation having no property except its deposits and the property in which they were invested, and authorized by the general statute of Massachusetts to receive money on deposit and to invest its deposits in securities of the United States, had on deposit on the 1st day of May, 1865, \$8,047,652, of which \$1,327,000 stood invested in public funds of the United States, exempt by law of the United States from taxation under State authority. The company declined to pay that portion of the tax on its property invested in United States bonds. On suit brought by the commonwealth to recover the same, the supreme judicial court of Massachusetts, regarding the tax as one on franchise, and not on property, held the tax to be lawful. (*Commonwealth v. Providence Institution*, 12 Allen, 312.)

By a subsequent statute, of 1864, c. 208, corporations having capital stock divided into shares were required to pay a tax of a certain percentage upon "the excess of the market value" of all such stock over the value of its real estate and machinery. The Hamilton Manufacturing Company refused to pay the tax upon that portion of its property which was invested in United States securities, because, by the act of Congress authorizing their issue, they were exempt from taxation by State authority. It was held by the supreme judicial court of Massachusetts that the tax was to be regarded as a tax on the franchise and privileges of the corporation, and was lawful so far as related to Federal securities. (*Commonwealth v. Hamilton Company*, 12 Allen, 300.)

The legislature of Connecticut in 1863 enacted that the savings banks in the State should annually pay to the treasurer of the State a sum equal to three-fourths of one per cent on the total amount of deposits. The "Society for Savings," a corporation of Connecticut, refused to pay the tax upon that portion of its deposits which was invested in United States bonds, declared by act of Congress to be exempt from taxation by State authority.

On a suit brought by Coite, treasurer of the State, to recover the tax thus withheld, the supreme court of Connecticut decided that the tax in question was not a tax on property, but on the corporation as such, and rendered judgment accordingly for the plaintiff. (*Coite v. Savings Bank*, 32 Conn., 173.)

In Pennsylvania it has been repeatedly held that the collateral inheritance law of that State, imposing a tax upon the total amount of the estates of decedents, is valid, although the estate may consist in whole or in part of United States bonds; and this upon the principle that what is called a collateral inheritance tax is a bonus, exacted from the collateral kindred and others, as the conditions on which they may be admitted to take the estate left by a deceased relative or testator; that the estate does not belong to them, except as a right to it is conferred by the State; that the right of the owner to transfer it to another after death, or of kindred to succeed, is the result of municipal regulation, and must, consequently, be enjoyed subject to such conditions as the State sees fit to impose. (*Strode v. Commonwealth*, 52 Pa. Stat., 181; *Clymer v. Commonwealth*, 52 Pa. Stat., 186.)

In Virginia the highest court of the State has construed a similar

statute as imposing the tax, not upon the property, but upon the privilege of acquiring it by will or under the intestate laws. (*Eyre v. Jacob*, 14 Grat., 422; *Miller v. Com.*, 27 Grat., 110.)

The supreme court of Illinois has held valid a statute of that State entitled "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same." (Rev. Stat. Ill., 1895, c. 120.) The constitutionality of the act was denied, because of the alleged want of reasonableness in its classification of those subject to the tax and the want of equality in the amounts imposed. But the supreme court held that an inheritance tax is a tax not upon property, but on the succession, and that the right to take property by devise or descent is the creature of the law, a privilege, and that the authority which confers the privilege may impose conditions upon it. (*Drake v. County Treasurer*, 167 Ill., 121.)

By an act of the legislature of New York (Laws of 1881, c. 361), it was enacted that "every corporation, joint stock company, or association whatever, now or hereafter incorporated or organized under any law of this State, * * * shall be subject to and pay a tax, as a tax upon its corporate franchise or business, into the treasury of the State, annually, to be computed as follows: If the dividends made or declared by such corporation, joint stock company, or association during any year amount to six per cent or more upon the par value of its capital stock, then the tax to be at the rate of one-quarter mill upon the capital stock for each one per centum of dividend so made or declared," etc.

The Home Insurance Company, a corporation of the State of New York, having a capital stock of \$3,000,000, declared a dividend of 10 per cent for the year 1881. During the year 1881 the company had part of its capital invested in United States bonds, exempt from State taxation. The amount so invested changed from \$3,300,000 to \$1,940,000 in such bonds during the year 1881. The company, in tendering payment of its tax, claimed that so much of the laws of New York as required a tax to be paid upon the capital stock of the company, without deducting from the amount so to be paid that part invested in bonds of the United States, was unconstitutional and void. In an action brought to recover such unpaid portion of the tax, the supreme court of New York, at general term, adjudged that the company was liable to pay such tax; and this judgment was affirmed by the court of appeals. The view of those courts was that, the tax being upon the franchise of the company, it mattered not how its capital stock or property may be invested, whether in United States securities or otherwise. (*Home Insurance Company v. New York*, 92 N. Y., 328.)

In *Monroe Savings Bank v. City of Rochester* (34 N. Y., 365), it was said:

"It is true that where a tax is laid upon the property of an individual or a corporation, so much of their property as is vested in United States bonds is to be treated, for the purposes of assessment, as if it did not exist, but this rule can have no application to an assessment upon a franchise, where a reference to property is made only to ascertain the value of the thing assessed. It is, however, argued with great ingenuity and skill that, inasmuch as the plaintiffs, among other powers given them, have the right to invest their money in United States bonds, their franchises and privileges can not be taxed by the State. The power thus to invest their money, it is contended, is a franchise for lending to the United States, and therefore can not be taxed, because such taxation would trench on the power of the United States to borrow. This

is stretching the argument too far. It can not be pretended that the State would violate any obligation resulting from the power of the United States to borrow money, if the law conferring the power upon the plaintiff to invest their money in United States stocks and bonds were repealed. The State is under no obligation, express or implied, to legislate to enhance the credit of the General Government, and should it adopt a system of legislation which indirectly produces such a result, its power of repeal can not be doubted. The position that a franchise granted by the bounty of the State is not taxable, because coupled with that franchise is the privilege of loaning money to the General Government, is not more untenable than to argue that, because such a franchise enhances the credit of the United States, therefore the legislature could not repeal the law granting the franchise without violating its constitutional obligation. Suppose the legislature had limited the amount in which the plaintiff could invest its money in the securities of the United States, it will not be contended that such limitation would be void because it impaired the power of the United States to borrow money. It must, therefore, be regarded as sound doctrine to hold that the State, in granting a franchise to a corporation, may limit the powers to be exercised under it, and annex conditions to its enjoyment, and make it contribute to the revenues of the State. If the grantee accepts the boon it must bear the burden."

In *Matter of Sherman* (153 N. Y., 1), it was said by the court of appeals of New York, per Chief Judge Andrews, that—

"This court has not been called to consider the question of the power of the State to prescribe that in ascertaining the value of the property of a decedent for the purpose of fixing the tax, under the collateral inheritance or transfer tax laws, the value of Federal securities owned by the decedent shall be included. But we apprehend that the existence of the power can not be denied upon reason or authority. The tax imposed is not, in a proper sense, a tax upon the property passing by will, under the statutes of descents or distribution. It is a tax upon the right of transfer by will, or under the intestate law of the State. Whether these laws are regarded as a limitation on the right of a testator to dispose of property by will, or upon the right of devisees to take under a will, or the right of heirs or next of kin to succeed to a property of an intestate, is immaterial. The so-called tax is an exaction made by the State in the regulation of the right of devolution of property of decedents, which is created by law, and which the law may restrain or regulate. Whatever the form of the property, the right to succeed to it is created by law, and if the property consists of Government securities, the transferee derives his right to take them as he does his right to take any other property of the decedent, under the laws of the State, and the State by these statutes makes the right subject to the burden imposed."

And in the case in hand, the very matter of complaint is that the courts of the State of New York held that, under the laws of that State, an inheritance tax can be validly assessed against the entire estate of a decedent, although composed in greater part of United States bonds; and the language of the surrogate, affirmed by the court of appeals, was as follows:

"It is almost unnecessary to state that the theory on which the courts have held this kind of security taxable is that the tax is not upon the bonds themselves, but upon the transfer thereof. This distinction is

firmly established in this State. See, besides the Sherman case, *Matter of Merriam* (141 N. Y., 479), *Matter of Bronson* (150 N. Y., 1), and it seems to have been recognized in the Supreme Court of the United States (163 U. S., 625, *United States v. Perkins*), in which *Matter of Merriam* was affirmed."

The decisions of the State courts may be summarized by the statement that it is competent for the legislature of a State to impose a tax upon the franchises of the corporations of the State, and upon the estates of decedents resident therein, and in assessing such taxes and as a basis to establish the amount of such assessments, to include the entire property of such corporations and decedents, although composed, in whole or in part, of United States bonds; and that the theory upon which this can be done consistently with the Constitution and laws of the United States is that such taxes are to be regarded as imposed, not upon the property, the amount of which is referred to as regulating the amount of the taxes, but upon franchises and privileges derived from the State.

Let us now proceed to a similar survey of the Federal authorities on this subject.

Mager v. Grima (8 How., 490) was a case where, by the law of Louisiana, a tax of 10 per cent was imposed on legacies, when the legatee is neither a citizen of the United States nor domiciled in that State, and the executor of the deceased or other person charged with the administration of the estate was directed to pay the tax to the State treasurer. Felix Grima was the executor of John Mager, and retained the amount of the tax in order to pay it over as the law directed. Suit was brought by a legatee to recover it, upon the ground that the act of Louisiana was repugnant to the Constitution of the United States. The validity of the act was sustained by the State courts, and the cause was brought to this court. The judgment of the State courts was here affirmed, and it was said, in the opinion delivered by Chief Justice Taney:

"Now, the law in question is nothing more than an exercise of the power, which every State and sovereignty possesses, of regulating the manner and terms upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance, and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take, either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of 10 per cent for the use of the State."

In *Van Allen v. The Assessors* (3 Wall., 573), it was held that it was competent for Congress to authorize the States to tax the shares of banking associations organized under the act of June 3, 1864, without regard to the fact that a part or the whole of the capital of such association was invested in national securities declared by the statutes authorizing them to be "exempt from taxation by or under State authority." This decision has ever since been acted upon, and its authority has never been questioned by any court, and from it we learn that there is no undeviating policy that, at all times and in all circumstances, the tax system of the States shall not extend to Federal securities.

The next cases to be noted are : *Society for Savings v. Coite* (6 Wall., 594) ; *Provident Insurance Company v. Massachusetts* (6 Wall., 611), and *Hamilton Company v. Massachusetts* (6 Wall., 632).

In these cases this court affirmed the supreme courts of Connecticut and Massachusetts in holding that State taxes may be imposed, the amount of which may be determined by the aggregate amount of the property or capital stock of banking and manufacturing companies, even if such property or capital stock includes United States bonds issued under a statute declaring them exempt from taxation under State authority.

As we have already seen, when referring to the State decisions, the reasoning upon which the State courts proceeded in the case of corporations was that such taxes were to be deemed as laid, not upon the bonds as property, but upon the franchise to do business as a corporation or association derived from the State. This reasoning was approved by this court; and it may be observed in passing that, as appears in the reports of the arguments of counsel, the contention so strongly pressed in the present case, namely, that under no form can Federal securities be practically rendered by State legislation less valuable, was fully argued. See, also, the case of *Scholey v. Rew* (23 Wall., 331).

Next worthy of notice is the case of *Home Insurance Company v. New York* (134 U. S., 594). It came here on error to the supreme court of the State of New York, whose judgment had been affirmed by the court of appeals, and was twice argued. The question considered was whether a statute of the State of New York was valid in respect to imposing a tax upon a New York corporation, measured and regulated by the amount of its annual dividends, where those dividends were partly composed of interest of United States bonds owned by the corporation.

As we have heretofore stated, the State courts answered this question in the affirmative, basing their decision upon the proposition that the tax was imposed as a tax upon corporate franchises or privileges, and that such a tax was not invalidated by the circumstance that the measure of its amount was fixed by the amount of the annual dividends of the company partly derived from the interest of United States bonds. (92 N. Y., 328.)

In this court the question was elaborately argued, as may be seen in the first report of the case in 119 U. S., 129; and it was again contended that the case fell within the principle of public policy that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the instrumentalities of the National Government, and also that the tax in question was repugnant to the Fourteenth Amendment of the Constitution of the United States.

The reasoning of the State court was substantially approved, and their judgment, sustaining the validity of the State statute, was affirmed. Some of the observations of the opinion of the court, delivered by Mr. Justice Field, may be appropriately quoted :

“Looking now at the tax in this case, we are unable to perceive that it falls within the doctrine of any of the cases cited, to which we fully assent, not doubting their correctness in any particular. It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United States composing a part of that stock. The statutes designate it a tax upon the ‘corporate franchise or business’ of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year.

“By the term ‘corporate franchise or business,’ as here used, we understand is meant (not referring to corporations sole, which are not

usually created for commercial business) the right or privilege given by the State to two or more persons of being a corporation—that is, of doing business in a corporate capacity, and not the privilege or franchise which, when incorporated, the company may exercise. The right or privilege to be a corporation, or to do business as such body, is one generally deemed of value to the corporators, or it would not be sought in such numbers as at present. It is a right or privilege by which several individuals may unite themselves under a common name and act as a single person, with a succession of members, without dissolution or suspension of business, and with a limited individual liability. The granting of such right or privilege rests entirely in the discretion of the State, and, of course, when granted, may be accompanied with such conditions as its legislature may judge most befitting to its interests and policy. It may require, as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the State each year or month, or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows. It may well seek in this way to increase its revenue to the extent to which it has been cut off by exemption of other property from taxation. As its revenues to meet its expenses are lessened in one direction, it may look to any other property as sources of revenue, which is not exempt from taxation. * * * The tax in the present case would not be affected if the nature of the property in which the whole capital stock is invested were changed, and put into real property or bonds of New York, or of other States. From the very nature of the tax, being laid upon a franchise given by the State, and revocable at pleasure, it can not be affected in any way by the character of the property in which its capital stock is invested. The power of the State over the corporate franchise and the conditions upon which it shall be exercised is as ample and plenary in the one case as in the other.”

And, after citing and commenting upon the previous cases from Connecticut and Massachusetts, the court said: “In this case we hold as well upon general principles as upon the authority of the first two cases cited from 6 Wallace, that the tax for which the suit is brought is not a tax upon the capital stock or property of the company, but upon its corporate franchise, and is not therefore subject to the objection stated by counsel, because a portion of its capital stock is invested in securities of the United States.

In *United States v. Perkins* (163 U. S., 625), the question was whether personal property bequeathed by will to the United States was subject to an inheritance tax under the law of the State of New York.

The facts of the case were that one William W. Merriam, a resident of the State of New York, left a last will and testament, by which he devised and bequeathed all his estate, real and personal, to the United States. The surrogate assessed an inheritance tax of \$3,964.23 upon the personal property included in said bequest. Upon appeal to the general term of the supreme court, the order of the surrogate's court was affirmed, and upon a further appeal to the court of appeals the judgment of the supreme court was affirmed, and the cause was brought to this court.

It was contended that, upon principle, property of the United States was not subject to State taxation ; but it was held by this court, affirming the judgment of the courts below, that the tax was not open to the objection that it was an attempt to tax the property of the United States, since the tax was imposed upon the legacy before it reached the hands of the legatee ; that the legacy became the property of the United States after it had suffered a diminution to the amount of the tax, and that it was only upon such a condition that the legislature assented to a bequest of it.

The reasoning of the court may be manifested by the following excerpts from the opinion delivered by Mr. Justice Brown :

“Though the general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition, or imposing such conditions upon its exercise as it may deem conducive to public good. In this view the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases ; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use ; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee. This was the view taken of a similar tax by the court of appeals of Maryland in *State v. Dalrymple* (70 Maryland, 294), in which the court observed :

“Possessing, then, the plenary power indicated, it necessarily follows that the State in allowing property to be disposed of by will, and in designating who shall take such property where there is no will, may prescribe such conditions, not in conflict with or forbidden by the organic law, as the legislature may deem expedient. These conditions, subject to the limitations named, are consequently wholly within the discretion of the general assembly. The act we are now considering plainly intended to require that a person taking the benefit of a civil right secured to him under our law should pay a certain premium for its enjoyment. In other words, one of the conditions upon which strangers and collateral kindred may acquire a decedent's property, which is subject to the dominion of our laws, is that there shall be paid out of such property a tax of two and a half per cent into the treasury of the State. This, therefore, is not a tax upon the property itself, but is merely the price exacted by the State for the privilege accorded in permitting property so situated to be transferred by will or by descent or distribution.’

“That the tax is not a tax upon the property itself, but upon its transmission by will or by descent, is also held both in New York and in several other States (*Matter of the Estate of Swift*, 137 N. Y., 77), in which it said that the ‘effect of this special tax is to take from the property a portion or percentage of it for the use of the State, and I think it quite immaterial whether the tax can be precisely classified with a taxation of property or not. It is not a tax on persons.’ (*Matter of Hoffman*, 143 N. Y., 237 ; *Schoolfeld's Executor v. Lych-*

burg, 78 Virginia, 366; *Strode v. Commonwealth*, 52 Pa. Stat., 181; *in re Cullom*, 145 N. Y., 593.) In this last case, as well as in *Wallace v. Myers* (38 Fed. Rep., 184), it was held that, although the property of the decedent included United States bonds, the tax might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the estate of the decedent, or the privilege of acquiring property by inheritance. (*Eyre v. Jacob*, 14 Grattan, 422; *Dos Passos on Inheritance Tax Law*, ch. 2, and cases cited.)

"Such a tax was also held by this court to be free from any constitutional objection in *Mager v. Grima* (8 How., 490), Mr. Chief Justice Taney remarking that 'the law in question is nothing more than the exercise of the power, which every State and sovereignty possesses, of regulating the manner and terms under which property, real and personal, within its dominion may be transferred by last will or testament, or by inheritance, and of prescribing who shall and who shall not be capable of taking it. * * * If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.' To the same effect is *United States v. Fox* (94 U. S., 315.)

"We think it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of tax and it is only upon this condition that the legislature assents to a bequest of it."

One of the propositions recognized in that case applicable to the present one is that a State tax that would be invalid if imposed directly on a legacy to the United States may be valid if the amount of the tax is taken out of the legacy before it reaches the hands of the Government, the theory of such a view apparently being that the property rights of the Government do not attach until after the tax has been paid, or until the condition imposed by the tax law of the State has been complied with. Such is also the case in respect to the legacy to Ella Plummer Brown, as the statute in question distinctly makes it the duty of the executor to pay the amount of the tax before the legacy passes to the legatee.

In *New York v. Roberts* (171 U. S., 658), an effort was made to have a tax imposed against corporations based upon "capital employed within the State" declared invalid, in that particular case, because a portion of such capital consisted of imported goods in original packages; and this court said:

"Again it is said that, assuming that the importation of crude drugs and their sale in the original packages constituted a portion of the corporate business, no tax could be imposed by the State under the doctrine of *Brown v. Maryland* (12 Wheat., 419). But that case is inapplicable. Here no tax is sought to be imposed directly on imported articles or on their sale. This is a tax imposed on the business of a corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture and some imported articles. From the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it can not be affected in any way by the character of the property in which its capital stock is invested."

In *Magoun v. Illinois Trust and Savings Bank* (170 U. S., 283), the validity of the inheritance-tax law of Illinois was assailed because of

inequalities and discriminations so great as to amount to a deprivation of property and to a denial of the equal protection of the laws. The law in question had been upheld by the supreme court of the State in the case of *Drake v. County Treasurer* (167 Ill., 122), hereinbefore referred to.

This court held that the law was one within the competency of the legislature of the State to make, and that it did not conflict in anywise with the provisions of the Constitution of the United States. In the course of the discussion, Mr. Justice McKenna, who delivered the opinion of the court, said :

"The constitutionality of inheritance taxes has been declared and the principles upon which they are based explained in *United States v. Perkins* (163 U.S., 325); *Strode v. Commonwealth* (52 Pa. Stat., 181); *in re Merriam* (141 N.Y., 479); *Minot v. Winthrop* (162 Mass., 113), and in *Scholey v. Rew* (23 Wall., 331).

"It is not necessary to review these cases or state at length the reasoning by which they are supported. They are based on two principles: (1) An inheritance tax is not one on property, but one on the succession. (2) The right to take property by devise or descent is the creature of the law, and not a natural right or privilege, and, therefore, the authority which confers it may impose conditions upon it. From these principles it is deduced that the State may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective State constitutions requiring uniformity and equality of taxation."

In closing our review of the Federal decisions, the case of *Wallace v. Myers* (38 Fed. Rep., 184) may be properly referred to, especially as it has been cited with approval by this court in *United States v. Perkins* (163 U. S., 625, 629).

The question involved was the very one we are now considering, namely, the validity of the inheritance tax law of the State of New York when applied to a legacy consisting of United States bonds. In his opinion Circuit Judge Wallace reviewed many of the State and Federal decisions heretofore referred to, and reached the conclusion that the tax was to be regarded as imposed, not on the bonds, but upon the privilege of acquiring property by will or inheritance, and that where the property of the decedent included United States bonds the tax may be assessed upon the basis of their value.

We think the conclusion fairly to be drawn from the State and Federal cases is that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the State may lawfully measure or fix the amount of the tax by referring to the value of the property passing; and that the incidental fact that such property is composed, in whole or in part, of Federal securities does not invalidate the tax or the law under which it is imposed.

Passing from the authorities, let us briefly consider some of the arguments advanced in the able and interesting brief filed in behalf of the plaintiff in error.

The propositions chiefly relied on are, first, that an inheritance tax, if assessed upon a legacy or interest composed of United States bonds, is within the very letter of the United States statute which declares that such bonds "shall be exempt from taxation in *any form* by or under State, municipal, or local authority;" and, second, that the tax in ques-

tion is unconstitutional, because impairing and burdening the borrowing power of the United States.

But if the first proposition is sound and decisive of the question in this case, then it must follow that the cases in which this court has held that, in assessing a tax upon corporate franchises, the amount of such a tax may be based upon the entire property or capital possessed by the corporation, even when composed in whole or in part of United States bonds, must be overruled. Plainly, in those cases, as in this, there was taxation *in a form*, and in them, as in this, the amount of the tax was reached by including in the assessment United States bonds.

So that we return to the authorities by which it has been established that a tax upon a corporate franchise, or upon the privilege of taking under the statutes of wills and of descents, is a tax not upon United States bonds if they happen to compose a part of the capital of a corporation or a part of the property of a decedent, but upon rights and privileges created and regulated by the State.

The second proposition relied on, namely, that to permit taxation of the character we are considering would operate as a burden upon the borrowing power of the United States, can not be so readily disposed of. Still, we think, some observations can be made which will show that the mischief, which it is claimed will follow if such statutes be sustained as valid, is by no means so great or important as supposed.

And here, again, it is obvious that to affirm the second proposition will require an overruling of our previous cases; for, on principle, if a tax on inheritances, composed in whole or in part of Federal securities, would, by deterring individuals from investing therein, and, by thus lessening the demand for such securities, be regarded as therefore unlawful, it must likewise follow that, for the same reasons, a tax upon corporate franchises measured by the value of the corporation's property, composed in whole or in part of United States bonds, would also be unlawful.

To escape from this conclusion, it is contended, in the argument of the plaintiff in error, that, conceding that such taxes may be valid as imposed on corporate franchises, and permitting our decisions in such cases to stand, yet that the case of the estates of decedents is different; that individual persons will be driven to consider, when making their investments, whether they can rely on their legatees or heirs receiving United States bonds unimpaired by State action in the form of taxation; and that if it should be held by this court that such taxation is lawful, capital would not be invested in United States on terms as favorable as if we were to hold otherwise.

This is only to state the proposition over again; for if it were our duty to hold that taxation of inheritances, in the cases where United States bonds pass, is unlawful because it might injuriously affect the demand for such securities, it would equally be our duty to condemn all State laws which would deter those who form corporations from investing any portion of the corporate property in United States bonds.

In fact, the mischief, if it exists at all and is not merely fanciful, might be supposed to be much greater in the case of State laws taxing franchises than the case of taxing the estates of decedents. So small now is the income derivable from Federal securities that few individuals, and those only of great wealth, can afford to invest in them; and the demand for them is mostly confined to banking associations and to large trading and manufacturing companies which invest their surplus in securities that can be readily and quickly converted into cash. Moreover, no inconsiderable portion of the United States loans is taken and

held, as every one knows, in foreign countries, where doubtless it is subjected to municipal taxation.

While we can not take judicial notice of the comparative portions of the Government securities held by individuals, by corporations, and by foreigners, we still may be permitted to perceive that the mischief to our national credit, so feelingly deplored in the briefs, caused by State taxation upon estates of decedents, would be inappreciable, and too remote and uncertain to justify us now in condemning the tax system of the State of New York.

It is further contended that there is a vital difference between the individual and the corporation; that the individual exists and carries on his operations under natural power and of common right, while the corporation is an artificial being, created by the State and dependent upon the State for the continuance of its existence, and subject to regulations and to the imposition of burdens upon it by the State, not at all applicable to natural persons.

Without undertaking to go beyond what has already been decided by this court in *Mager v. Grima* (8 How., 490), in *Scholey v. Rew* (23 Wall., 331), and in *United States v. Perkins* (163 U. S., 625), and in the other cases heretofore cited, we may regard it as established that the relation of the individual citizen and resident to the State is such that his right, as the owner of property, to direct its descent by will, or by permitting its descent to be regulated by the statute, and his right, as legatee, devisee, or heir, to receive the property of his testator or ancestor, are rights derived from and regulated by the State, and we are unable to perceive any sound distinction that can be drawn between the power of the State in imposing taxes upon franchises of corporations composed of individual persons and in imposing taxes upon the right or privilege of individuals to avail themselves of the right to grant and to receive property under the statutes regulating the descent of the property of decedents. And, at all events, the mischief apprehended of impairing the borrowing power of the Government by State taxation is the same whether that taxation be imposed upon corporate franchises or upon the privilege created and regulated by the statutes of inheritance.

Again, it is urged that the pecuniary amount of the State tax which is to be set aside is of no legal consequence; that any amount, however inconsiderable, is an interference with the constitutional rights of the United States, and must therefore be annulled by the judgment of this court. Of course, nobody would attempt to affirm that an unconstitutional tax could be sustained by claiming that, in a particular case, the tax was insignificant in amount.

But when the effort is made, as is the case here, to establish the unconstitutional character of a particular tax by claiming that its remote effect will be to impair the borrowing power of the Government, courts in overturning statutes, long established and within the ordinary sphere of State legislation, ought to have something more substantial to act upon than mere conjecture. The injury ought to be obvious and appreciable. It may be opportune to mention that, even while we have been considering this case, the United States Government has negotiated a public loan of large amount at a lower rate of interest than ever before known. From this it may be permissible to infer that the existence of legislation, whether State or Federal, including Federal securities as part of the mass of private property subject to inheritance taxes, has not practically injured or impaired the borrowing power of the Government.

The contention of the plaintiff in error that taxation of the estates of decedents, in any form, and however slight, is invalid, if United States bonds are included in the appraisal, seems to be unreasonable. Suppose a decedent's estate consisted wholly of United States securities, could it reasonably be claimed that the charges and expenses of administration, imposed under the laws of the State, would not be payable out of the funds of the estate? If the estate were a small one, such expenses might require the application of all the Federal securities. If the estate were a large one, the expenses attendant upon administration would be proportionately large, to be raised out of the Federal securities. It is not sufficient to say that such expenses are in the nature of statutory debts, and that the question of the exemption of United States bonds can not arise until after the debts of the estate shall have been paid; for, after all, what is an inheritance tax but a debt exacted by the State for protection afforded during the lifetime of the decedent? It is often impracticable to secure from living persons their fair share of contribution to maintain the administration of the State, and such laws seem intended to enable to secure payment from the estate of the citizen when his final account is settled with the State. Nor can it be readily supposed that such obligations can be evaded or defeated by the particular form in which the property of the decedent was invested.

Upon the whole, we think that the decision of the courts below was correct, and the judgment is, therefore, affirmed.

Mr. Justice White dissents.

Mr. Justice Peckham took no part in the decision.

SUPREME COURT OF THE UNITED STATES.—No. 458.—OCTOBER TERM, 1899.

George T. Murdock, as Executor of Jane H. Sherman, deceased, Plaintiff in Error, v. John G. Ward, United States Collector of Internal Revenue.

In error to the circuit court of the United States for the southern district of New York.

[May 14, 1900.]

In October, 1899, George T. Murdock, as executor of the last will and testament of Jane H. Sherman, brought an action in the supreme court of the State of New York against John G. Ward, collector of internal revenue for the fourteenth district of the State of New York, wherein the plaintiff sought to recover the sum of \$36,827.53, which the plaintiff alleged had been unlawfully exacted from him as executor of said estate.

On petition of the defendant, the cause was removed into the circuit court of the United States for the southern district of New York.

The complaint contained the following allegations:

"I. Jane H. Sherman, late of the village of Port Henry, in the county of Essex and State of New York, died on or about the 30th day of September, 1898, leaving certain property, and also leaving a last will and testament, in and by which said will this plaintiff, George T. Murdock, was appointed to be, and by due order of the surrogate of the county of Essex, in the State of New York, to whom jurisdiction in that behalf pertained, he has become and is, the sole executor of the said last will and testament of said Jane H. Sherman.

"II. The plaintiff further alleges and states that the said Jane H. Sherman, deceased, upon her death left a very considerable amount of personal property, amounting to upward of one million of dollars.

"III. That the defendant, John G. Ward, at all the times mentioned in this complaint, was, and he is, collector of internal revenue for the fourteenth district of the State of New York, having his office and official place of residence at the city of Albany, in the State of New York.

"IV. That said John G. Ward, assuming to act as such collector, and assuming and pretending to act under and by virtue of the laws of the United States, which he assumed conferred authority upon him therefor, and particularly under and in pursuance of the provisions of an act of the Congress of the United States, commonly known as the 'war-revenue law' of June 13, 1898, and being an act to provide ways and means to meet war expenditures, and for other purposes, passed by the Congress of the United States, and becoming a law on the 13th day of June, 1898, did, on or about the fourth day of April, 1899, by force and duress, exact, demand, and collect from this plaintiff and from the estate represented by him as such executor the sum of thirty-six thousand eight hundred and twenty-seven dollars and fifty-three cents (\$36,827.53), and upon the claim and under the pretext that the same was a lawful assessment as an internal-revenue tax upon the estate of said deceased and against this plaintiff, as executor of said deceased, on account of the legacies or distributive shares arising from personal property, being in charge or trust of this plaintiff, as such executor as aforesaid, the properties assumed to be assessed for such tax being properties passing from the said Jane H. Sherman.

"V. That on or about the 8th day of April, 1899, this plaintiff, under protest, and protesting that he was not nor was the estate represented by him liable to pay said tax, involuntarily and under duress, because of the illegal demand made upon by said defendant, did pay to the said defendant as such collector, as aforesaid, the said sum of \$36,827.53.

"VI. That thereafter, believing the imposition of said tax and its collection to be unlawful, this plaintiff did appeal to the Commissioner of Internal Revenue and to the Treasury Department of the United States of America from the action and decision of said defendant in holding this plaintiff to be liable for the payment of said tax and in collecting the said tax in manner aforesaid, and did state and represent to said Commissioner, that the collection of said tax was unlawful, and that the amount thereof should be refunded for the following reasons:

"First. The imposition of said tax was unconstitutional, unlawful, and void.

"Second. The imposition and collection of said tax deprived this deponent of his property and the estate represented by him of its property without due process of law.

"Third. That the law imposing said tax is not uniform, and does not afford equal protection of the laws to persons throughout the United States.

"Fourth. That the law imposing said tax denied and does deny to persons throughout the United States and within its jurisdiction the equal protection of the laws.

"Fifth. That the law under which said tax was imposed denies to this deponent the equal protection of the laws.

"Sixth. The tax so imposed is a direct tax, and is void because not apportioned among the States in proportion to their population and in accordance with the provisions of the Constitution of the United States.

"Seventh. If said tax is an impost, excise, or duty, the law imposing the same is unconstitutional and void, because the tax levied is not uni-

form throughout the United States, as required by the Constitution of the United States; and

“‘Eighth. It is not within the province of the constitutional powers of the United States to levy a tax upon a right of inheritance or disposition by will, provided for by the laws of the State of New York.’

“And this plaintiff did, in and by such appeal, claim that he was entitled to have the sum of money so paid and the amount thereof refunded, and he did then and there ask and demand the return of the same moneys to him, and did appeal from the act of said defendant, as such collector, in imposing said tax and exacting from plaintiff payment of the amount thereof.

“VII. On the 21st day of October, 1899, the said Commissioner of Internal Revenue and the Treasury Department of the United States, represented by the said Commissioner of Internal Revenue, did disallow the appeal of this plaintiff in the behalf above stated, and did reject the claim of the plaintiff to have refunded the amount of the tax paid as aforesaid.

“VIII. A very large proportion and at least one-third of the personal estate upon account of which said tax was exacted from and paid by this plaintiff consisted in the bonds and interest-bearing evidences of debt issued by the Government of the United States, and which by contract between the United States and the holders thereof were and are not subject or liable to assessment or taxation, nor was or is this plaintiff subject or liable to assessment or taxation by means of his ownership or holding, as executor, as aforesaid, or otherwise, of such bonds and certificates of indebtedness.

“IX. This plaintiff claims and charges that by reason of the premises the amount of said tax has been unlawfully exacted from him as executor of said estate; that each and every of the grounds stated by him in the above-mentioned appeal to the said Commissioner of Internal Revenue states and represents a true and lawful reason why the imposition of said tax is unlawful and why the said tax should be refunded.

“Wherefore this plaintiff demands judgment against the said defendant for the sum of thirty-six thousand eight hundred and twenty-seven dollars and fifty-three cents (\$36,827.53), with interest from the 8th day of April, 1899, with the costs of this action.”

The defendant, appearing by Henry L. Burnett, United States attorney for the southern district of New York, demurred to the complaint upon the ground that the complaint did not state facts to constitute a cause of action.

On November 14, 1899, after hearing, the circuit court sustained the demurrer and ordered the complaint to be dismissed with costs to the defendant. Thereupon a writ of error was allowed to the judgment and the cause was brought to this court.

Mr. Justice SHIRAS delivered the opinion of the court.

That the tax imposed under the provisions of the revenue act of June 13, 1898, is a direct tax, and, therefore, void because not apportioned among the States in proportion to their population; that if not a direct tax, but an impost, excise, or duty, it is void, because the tax levied is not uniform throughout the United States; and that it is not within the province of the constitutional power of the United States to levy a tax upon a right of inheritance or disposition by will, provided for by the laws of the State of New York, are contentions of the plaintiff in error which have been determined against him in the case of Knowlton and

Buffum, Executors, *v.* Moore, Collector, just decided by this court. The opinion in that case so fully discusses the arguments urged in support of those propositions that their further consideration is unnecessary.

The remaining question is that presented by the following assignment of error :

"The court erred in refusing to find that, in so far as the estate of the deceased consisted of the Government bonds of the United States mentioned in said complaint, the Congress had no right or authority to impose or assess any tax upon the same, and in refusing to find that the plaintiff in error was entitled to recover back from the defendant in error in this action the amount of the tax mentioned in his complaint, and which was assessed against the plaintiff in error because of his ownership as executor, as aforesaid, of such bonds of the Government of the United States."

The only allegation in the complaint respecting bonds of the United States is contained in the eighth paragraph, which is as follows :

"A very large proportion and at least one-third of the personal estate upon account of which said tax was exacted from and paid by this plaintiff consisted in the bonds and interest-bearing evidences of debt issued by the Government of the United States, and which by contract between the United States and the holders thereof were and are not subject or liable to assessment or taxation, nor was or is this plaintiff subject or liable to assessment or taxation by means of his ownership or holding as executor, as aforesaid, or otherwise, of such bonds and certificates of indebtedness."

The complaint does not set forth the terms of the will, nor attach a copy of it as an exhibit. And it is suggested in the brief of the Solicitor-General, filed on behalf of the United States, that, as presented by the record, this is not a case where United States bonds have passed from the testatrix to legatees, but where a personal estate of a certain value in money has passed to the executor to be charged against him as money, to be distributed among the beneficiaries under the will; and that, therefore, for aught that appears, the executor may have sold every bond and distributed the proceeds in money; and that, even if legatees, entitled to certain sums of money, shall have accepted United States bonds in lieu of money, they would take the bonds, not under the will, but as purchasers.

However, the complaint does allege that the money which is sought to be recovered was assessed against the plaintiff as executor of the deceased "on account of legacies or distributive shares arising from personal property being in his charge or trust, as such executor as aforesaid, the properties assumed to be assessed for such tax being properties passing from the said Jane H. Sherman," and were paid by him under duress. Such allegations, taken in connection with that contained in the eighth paragraph, above quoted, to the effect that, of the property taxed, at least one-third part consisted of United States bonds, makes it to sufficiently appear that United States bonds, in the hands of the plaintiff as executor or trustee under a will, were included as a portion of the estate passing to the executor, and were assessed and taxed as such portion. It may also be observed that it is the executor or trustee who has in charge the legacies or distributive shares arising from personal property, passing after the passage of the act, from any person possessed of such property, who is the person taxed in respect to such property. Accordingly, we think there is room in this record for the

contention of the plaintiff in error that, as matter of fact, bonds of the United States formed a portion of the property actually assessed ; and that, consequently, the court is called upon to determine whether it was obligatory on the executor of Jane H. Sherman to include in his statement to the collector bonds of the United States in his possession and charge as such executor, and whether it was the right and duty of the collector to demand and receive from the executor a sum of money measured by the value of the property in his hands, although composed in part of United States bonds.

Putting aside, as already disposed of in the case of *Knowlton v. Moore*, the claims that inheritance and legacy taxes imposed by the United States in the act of June 13, 1898, are invalid because, as direct taxes, not apportioned, or, as duties, for want of uniformity, or because the taxing power of the United States does not reach such property transmissible under the laws of the States, it is conceded, as we understand the argument of the plaintiff in error, that United States bonds would be properly included in estimating the amount of an inheritance or legacy tax, were it not for the clauses contained in the United States statutes exempting such bonds from State and Federal taxation. On the other hand, it is not denied by the counsel for the Government that it was the intention of those clauses to exempt the bonds and interest thereon from any Federal tax, direct or indirect. What is denied is that there was any intention on the part of Congress, by the clauses mentioned, to exempt the portion of an estate invested in United States bonds from either a State or Federal inheritance tax.

It is claimed by the plaintiff in error, and conceded by the Government, that the exemption clause was incorporated into the bonds and became a subsisting contract between the Government and the bond holders. It is further contended on the one side and conceded on the other that this contract extends to the *assigns* of the holders. But a legal issue is joined when it is affirmed by the plaintiff in error and denied by the Government that *assigns* must be interpreted to include those whose title is derived under the inheritance and legacy laws of the States.

It has recently been decided by this court, in the case of *Plummer, Executor, v. Coler*, where the question involved was the validity of the inheritance-tax law of the State of New York when applied to a legacy consisting of United States bonds containing a clause of exemption from State and Federal taxation, that the conclusion fairly to be drawn from the State and Federal cases is that the right to take property by will or descent is derived from and regulated by municipal law ; that, in assessing a tax upon such right or privilege, the State may lawfully measure or fix the amount of the tax by referring to the value of the property passing ; and that the incidental fact that such property is composed, in whole or in part, of Federal securities, does not invalidate the tax or the law under which it is imposed.

It may be said that in that case we were dealing with the sovereign power of a State to tax property within her own limits ; but still the contention had to be met that Federal bonds were not within the taxing power of the State, not only because they were declared to be exempt from State taxation in any form, but because they were means devised by the Government to raise money, and that such a purpose might be defeated if the States were permitted to tax the bonds in the hands of their holders. The conclusion, however, was reached, following State and Federal cases cited, that the inheritance or legacy tax law of the State of New York did not expressly, or by necessary implication, pro-

pose to tax Federal securities; that the tax was not imposed on the property passing under the State laws, but on the right of transfer by will or under the intestate law of the State; that whatever the form of the property, the right to succeed to it is created by law, and if it consists of United States bonds, the transferee derives his right to take them, as he does his right to take any other property of the decedent, under the laws of the State, and the State by its statutes makes the right subject to the burden imposed.

A similar distinction has been recognized by several of the State courts, which have held that while a tax imposed on United States bonds by a State statute would be invalid because beyond the reach of the State's power to tax, yet that a tax upon the franchises or capital stock of a State corporation, measured by the value of its entire property, would be valid, even if the property was composed in whole or in part of Federal securities, because the tax can be regarded as imposed, not on specific property, but on the rights and privileges bestowed by the State. (*Commonwealth v. Providence Institution*, 12 Allen, 312; *Commonwealth v. Hamilton Company*, 12 Allen, 300; *Coite v. Savings Bank*, 32 Conn., 173.)

The judgments in those cases, holding that State taxes may be lawfully imposed, the amount of which may be determined by the aggregate amount of the property or capital stock of banking or manufacturing companies, even if such property or capital stock includes United States bonds issued under a statute declaring them exempt from taxation under State authority, were affirmed by this court. (*Society for Savings v. Coite*, 6 Wall., 594; *Insurance Company v. Massachusetts*, *Id.*, 611; *Hamilton County v. Massachusetts*, *Id.*, 632.)

Without repeating the discussion in the opinion in *Plummer, Executor, v. Coler*, and following the conclusion there reached, we are unable to distinguish that case from the present one.

If a State inheritance law can validly impose a tax measured by the amount or value of the legacy, even if that amount includes United States bonds, the reasoning that justifies such a conclusion must, when applied to the case of a Federal inheritance law taxing the very same legacy, bring us to the same conclusion. We must, therefore, hold that if, as held in *Knowlton v. Moore*, the tax imposed under the act of June 13, 1898, is not invalid as a direct, unapportioned tax, nor for want of uniformity, nor as an infringement upon the laws of the States regulating wills and descents, then the tax upon legacies or bequests, descendible under and regulated by State laws, is valid, even if such legacies incidentally are composed of Federal bonds.

It can not be denied that the Government of the United States has, and has heretofore exercised, the power to tax its own bonds. By the act of July 1, 1862 (12 Stat., 474), there was imposed a tax upon the interest on United States bonds at one-half the rate of the tax imposed upon the income of other property; and by the act of June 30, 1864 (13 Stat., 281 and 479), the discrimination in favor of the holders of United States bonds was abandoned, and the interest on them was taxed at the like rates as other income.

The argument in this case turns, at last, upon the proposition that, by the exempting clauses in the statutes and on the face of the bonds, the United States entered into a contract with those who should buy and hold the bonds that neither principal nor interest should be taxed.

Whether the United States, in the exercise of the power of taxation, can be estopped by a contract that such power shall not be exercised, we need not consider, because the contract in this case does not, as we

view it, mean that a State may not, or the United States may not, tax inheritances and legacies, regardless of the character of the property of which they are composed. That some of the holders of United States bonds may have paid franchise taxes to the States, and others may have paid State or Federal inheritance and legacy taxes, has nothing to do with the contract between the United States and the bondholders. The United States will have complied with their contract when they pay to the original holders of their bonds, or to their assigns, the interest, when due, in full, and the principal, when due, in full.

These views demand an affirmance of the judgment of the circuit court sustaining the defendant's demurrer to the complaint.

We observe that it appears in the schedule of legacies prepared by the executor in this case, on a form apparently furnished by the collector of internal revenue, that several of the legacies under Mrs. Sherman's will were for sums under ten thousand dollars, and which were, therefore, under the construction put by this court on the statute in *Knowlton v. Moore*, not taxable. It also appears that the theory on which the taxes were computed in respect to legacies over ten thousand dollars was by measuring the tax by the amount of the entire estate, instead of by the amount of each legacy. This method of construing and applying the statute we have held, in *Knowlton v. Moore*, to be erroneous. Therefore, the executor, representing the respective legatees, is entitled to recover back the amount of taxes paid on legacies under ten thousand dollars, and likewise such excess of taxes as was paid by reason of the erroneous interpretation of the statute.

We here meet the formal difficulty that neither the complaint in the circuit court nor the assignments in error in this court apparently questioned the correctness of the construction put upon the statute by the collector. The questions raised and considered only involved the validity of the act, and not its construction if valid.

As, however, the parties proceeded on a mutual mistake of law, we think the practical injustice that might result from an affirmance of the judgment may be avoided by reversing the judgment at the cost of the plaintiff in error, and sending the cause back to the circuit court with directions to proceed therein according to law.

And accordingly it is so ordered.

Mr. Justice White dissents in respect to the taxability of the bonds.

Mr. Justice Peckham took no part in the decision of the case

SUPREME COURT OF THE UNITED STATES.—No. 459.—OCTOBER TERM, 1899.

George D. Sherman, Plaintiff in Error, v. The United States.

In error to the circuit court of the United States for the northern district of New York.

[May 14, 1900.]

In the circuit court of the United States for the northern district of New York, on November 20, 1899, George D. Sherman filed a complaint against the United States seeking to recover from said defendant the sum of \$8,969.02, which he claimed had been unjustly exacted by John G. Ward, collector of internal revenue for the fourteenth district of New York, from George T. Murdock, executor of the last will of Mrs. Jane H. Sherman, the mother of complainant, as a duty or tax imposed by virtue of the provision of the act of June 13, 1898; that said sum of

\$8,969.02 was deducted by the said executor from the income, due and payable under the provisions of said will to the complainant; that the income of which the complainant was entitled to receive an annual portion during his life, was composed in part of United States bonds which the complainant avers to be, by virtue of the acts of Congress under which they were issued nontaxable and nonassessable for the purposes of taxation.

The complaint further alleged, among other things, that the tax so imposed was void because a direct tax, not apportioned among the States in proportion to their population; that if said tax was not direct, but an impost, excise, or duty, the same was void, because not uniform throughout the United States; and that it is within the constitutional power of Congress to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York, or to require the payment of a larger or different amount of tax from or imposed upon a legacy or a legatee, because of the greater wealth of the donor of such legacy, than is required when the legacy is a gift of a testator of smaller means.

The United States, appearing by Charles H. Brown, United States attorney for the northern district of New York, demurred to the complaint upon the ground that the same did not state facts sufficient to constitute a cause of action. On hearing, the circuit court sustained the demurrer, and ordered that the complaint be dismissed. A writ of error was allowed to this judgment, and the cause was brought to this court.

Mr. Justice SHIRAS delivered the opinion of the court.

In so far as the contentions urged in this action are based on the allegation that the tax imposed on the legacies left in the will of Mrs. Jane H. Sherman is void because it is an unapportioned, direct tax, or, if not a direct tax but a duty or excise, the same is void because not uniform throughout the United States, or void because it is not competent to levy an inheritance or legacy tax upon property passing to legatees under the laws of the State of New York, they have been disposed of adversely to the plaintiff, in the case of Knowlton, Executor, *v. Moore*, Collector, recently decided by this court.

So, too, the proposition that bonds of the United States and the income therefrom are not lawfully taxable under an inheritance-tax law of the United States, because exempted by contract from such tax, has just been decided not to be well founded, in the case of Murdock, Executor, *v. John G. Ward*.

The allegation in the complaint that "it is not within the constitutional power of Congress to require the payment of a larger or different amount of tax from or imposed upon a legacy or a legatee because of the greater wealth of the donor of such legacy than is required when the legacy is the gift of a testator of smaller means," need not be considered, because this court has held, in the case of Knowlton, Executor, *v. Moore*, that upon a proper construction of the act of June 13, 1898, the amount of the inheritance or legacy tax levied thereunder is measured by the amount of the legacy or distributive share passing under the laws of the State, and not by the amount of the estate of the testator or of the deceased owner.

As, however, it appears in this record that the taxes actually levied and paid on the legacies left by the will of Mrs. Sherman were computed upon the mistaken assumption that the amount of the estate of

the testatrix was the measure of the tax, and not the amount of the respective legacies, the complainant is entitled to be repaid the excess thus imposed upon his legacy. As we have reversed the judgment in the case of *Murdock*, as executor of *Mrs. Sherman*, *v. the Collector*, and have remanded that case to the circuit court of the southern district of New York, in order that the erroneous computation may be corrected, and as thus what is coming to the plaintiff in error, upon such correction being made, will be recovered by *Murdock* as executor and trustee under the will of *Mrs. Sherman*, and thereby and in that case the plaintiff in error will be indemnified, he needs no further proceeding in his suit in the circuit court for the northern district of New York. Lest, however, the judgment dismissing his complaint may embarrass his right to claim indemnity from the executor, we shall reverse this judgment, and it is so ordered.

Mr. Justice White dissents in respect to the taxability of the bonds.
Mr. Justice Peckham took no part in the decision of the case.

SUPREME COURT OF THE UNITED STATES.—No. 225.—OCTOBER TERM, 1899.

Shirley T. High and Jessie M. High, Appellants, v. F. E. Coyne, as Collector of the United States Internal Revenue, and Ellen T. High, as Executrix of James L. High, deceased.

Appeal from the circuit court of the United States for the northern district of Illinois.

[May 14, 1900.]

The complainants, who are appellants here, filed their bill to enjoin the executrix of their father's estate from paying the legacy taxes levied by sections 29 and 30 of the war-revenue act of 1898. The collector of internal revenue was also made a defendant, and an injunction was asked against him to prevent his collecting or attempting to collect the taxes in question, which, it was asserted, he was about to enforce against the executrix, who, it was averred, would pay unless by the writ of injunction she was forbidden to do so. As heirs of their father and as beneficiaries of his estate, the complainants asserted they were entitled to prevent the executrix from making payment of taxes which were unconstitutional and hence void. The reasons relied on to show that the taxing law was repugnant to the Constitution of the United States were that the taxes were direct and not apportioned, were not uniform, and were levied on objects beyond the scope of the authority of Congress. The bill was demurred to as not stating ground for relief. The demurrers were sustained, and from a decree dismissing the suit this appeal is prosecuted.

Mr. Justice WHITE delivered the opinion of the court.

As the court below did not grant an injunction, but dismissed the bill, it is unnecessary to consider whether the right would have existed to enjoin the collector of internal revenue even had the court concluded that the averments of the bill disclosed a cause of action. (Rev. Stat., 3226.)

Every ground relied on to maintain that the taxes levied by sections 29 and 30 of the war-revenue act are repugnant to the Constitution has been decided adversely in the opinion this day announced in *Knowlton v. Moore*.

This disposes of this case, as the assignments of error raised only the

constitutionality of the taxes, and there is nothing in the record to enable us to see that the statute was, by the collector, mistakenly construed.

As, however, the interpretation of the statute, which was held to be unsound in No. 387, was the one which was adopted and enforced by the officers charged with the administration of the law, the impression naturally arises that such erroneous construction must have been applied in assessing the tax in controversy. The ends of justice therefore require that the right to resist so much of the tax as may have arisen from the wrong interpretation of the statute above referred to be not foreclosed by our decree.

Decree affirmed, without prejudice to any such right.

SUPREME COURT OF THE UNITED STATES.—No. 451.—OCTOBER TERM, 1899.

The Fidelity Insurance, Trust and Safe Deposit Company, Executor under the will of Daniel Craig, deceased, Plaintiff in Error, v. Penrose A. McClain.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

[May 14, 1900.]

Mr. Justice WHITE delivered the opinion of the court.

This action was begun in a court of common pleas for the county of Philadelphia, State of Pennsylvania, to recover from the defendant, a collector of internal revenue, the sum of \$168.75 with interest, being the amount of an assessment made by the defendant under the authority of sections 29 and 30 of the war-revenue act of June 13, 1898, which we have just considered. The statement of claim filed on behalf of the plaintiff contained an averment of the amount of the tax paid, without any particular description of the mode in which it had been levied. It was averred that the payment of the tax had been made under protest, and because of threats to distrain, etc. It was also further stated that an application for refunding had been refused, and judgment was prayed for the amount of the tax. The demand was based solely on the ground of the unconstitutionality of the statute, which was asserted to exist, because the tax was direct and had not been apportioned, and, if not direct, was wanting in uniformity.

The cause was removed into the circuit court of the United States for the eastern district of Pennsylvania. The defendant demurred on the ground that no cause of action was stated, and the demurrer was sustained. A judgment having been entered in favor of the defendant, the present writ of error was prosecuted.

The record contains the protest made at the time of the payment of the tax and the petition for refunding. Both of these documents disclose that the sole ground urged against the assessment and collection of the tax was the unconstitutionality of the statute in the particulars above mentioned. This constitutional objection, as we have already said, was the only ground alleged in the statement of the case. The assignment of errors here made also confine the issue solely to the constitutional questions already referred to. There is nothing in the record to show the amount of the estate, the legacies or distributive shares therein, or upon what basis the collector proceeded in assessing the tax. It contains, therefore, nothing from which it can be said that if the law under which the tax was laid be constitutional, an excessive tax was imposed. In *Knowlton v. Moore*, No. 387 of this term, just decided, it

was held that the law in question was constitutional. As, however, the interpretation of the statute which was held to be unsound in No. 387 was the one which was adopted and enforced by the officers charged with the administration of the law, the impression naturally arises that such erroneous construction may have been applied in assessing the tax in controversy. The ends of justice, therefore, require that the right to relief as to so much of the tax, if any, as may have arisen from the wrong interpretation of the statute above referred to, be not foreclosed by our judgment.

Judgment affirmed, without prejudice to the right to any such relief.

(143.)

Legacy taxes.

Preparation of claims for refunding legacy taxes paid in error or in excess.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1900.

SIR: In reply to your letter of the 28th ultimo, you are informed that this office will consider claims for the refunding of taxes erroneously paid on legacies or paid in excess of the amount due under the act of June 13, 1898, as construed by the recent decisions of the United States Supreme Court.

Claims of this character should be made on Form 46, and should be made by the executors or administrators who paid the taxes. In cases where the estates have been closed and the executors or administrators discharged, that fact should be clearly shown in the claims, and the names of the several legatees who bore the burden of taxation and the amount borne by each should be shown. Each claim should be further supported by a copy of the will of the testator (unless a copy has been previously filed in this office), and a copy of the return upon which the tax was assessed, and an amended return should be made out in accordance with the law as construed by the United States Supreme Court.

Claims should be forwarded to this office through the office of the collector to whom the taxes were paid.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. J. G. WARD, *Collector Fourteenth District, Albany, N. Y.*

(146.)

Legacy tax.

An illegitimate son considered a stranger in blood, and legacy from a reputed father taxable accordingly.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 4, 1900.

SIR: In reply to your letter of the 1st instant, in the matter of the estate of William S. Seymour, deceased, you are informed that "an

illegitimate son, being in the eye of the law a stranger in blood to the person who may be his reputed father, the tax imposed upon a legacy to such a son from the father will be at the rate of \$5 for each and every \$100 of the clear value of such legacy," provided the legacy exceeds \$10,000. (See *Boutwell's Manual*, p. 360.) As each of the legacies mentioned in the return of the executors of this estate exceeds \$25,000, and does not exceed \$100,000, the rate of tax will be \$5, multiplied by $1\frac{1}{2}$, and the total tax in both cases amounts to \$4,993.88.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. W. FRANK KINNEY, *Collector Internal Revenue, Hartford, Conn.*

(158.)

Legacy tax—Instructions relative to making legacy returns, Form 419.

Return due where any legacy or share exceeds \$10,000.—The amount of each separate legacy or share governs liability to the tax and the rate of tax upon each legacy or share.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1900.

SIR: In reply to your letter of the 8th instant, concerning legacy returns on Form 419, you are informed and instructed as follows:

Where the whole personal estate is made up of legacies and distributive shares any one of which exceeds \$10,000, a return is required. If no separate legacy or share exceeds \$10,000, a return is not required.

In rendering a return, the amount of each and every legacy or share should be entered in column 4, Form 419; where the legacy or share is exempt, the amount thereof should be carried into column 5 as exempt, and the amount of each legacy or share which exceeds \$10,000 should be carried into column 6 as an amount taxable, excepting in the case of a partial distribution, when the amount of the legacy to which the beneficiary is then or may thereafter be entitled to receive may be noted in column 9, and only the amount then taxable entered in column 6. Column 9 should show why the full amount is not then to be distributed.

A legacy or distributive share which does not exceed \$10,000 is not taxable, but where a legacy or distributive share does exceed that amount the full amount of the legacy or share is taxable. The liability to the tax and the rate of tax are governed by the amount of each separate legacy or distributive share, and not by the whole amount of the personal estate of the deceased from which the legacy or distributive share is derived. (See T. D. 129, May 15, 1900, published in series 7, No. 3, revised—Supplement No. 1.)

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

(161.)

Legacy tax.

Claims for abatement of legacy taxes under the decision of the United States Supreme Court.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 21, 1900.

SIR: In reply to your letter of the 26th ultimo, you are informed that you may present claims on Form 47, in your own name, for the abatement of legacy taxes, which are not now due by reason of the decision of the United States Supreme Court as rendered on May 14, 1900. In cases where only part of an assessment is due, claims may be made for the abatement of the excess. The decision of the Supreme Court should be referred to in the affidavit on Form 47.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. H. C. H. HEROLD, *Collector Fifth District, Newark, N. J.*

(202.)

Legacy tax.

The tax is on the amount received by the beneficiary, when, in the aggregate, it exceeds \$10,000, although each benefit, legacy, or distributive share, taken separately, may be less.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 18, 1900.

SIR: Your letter of the 11th instant, in regard to legacy tax in the case of the estate of James C. Brown has been received.

By the will of Mr. Brown he gives absolutely to his nephew \$5,000. After the death of his wife there is to be a distribution of the estate, which is valued at over \$100,000, and the nephew is to receive a further sum.

The question you present is whether the beneficiary of an estate is taxable on the whole amount he derives from it, coming as one legacy or more than one, or consisting of one or more legacies or a distributive share, or is taxable only on the amount of each source of benefit, legacy, or distributive share, taken separately.

In reply, you are advised that it is the entire beneficial interest of the legatee or distributee that is subject to tax. For instance, if a beneficiary should receive a specific legacy of \$5,000, and the same beneficiary is interested in the residuary estate, or to become entitled to additional personal property on the death of a life tenant, the \$5,000 would be subject to tax before distribution, and tax must also be paid on additional amounts before distribution.

It is the *aggregate* amount of the legacy or distributive share which is subject to tax, if such aggregate amount exceeds the sum of \$10,000.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. AUGUSTUS VAN WYCK, *New York, N. Y.*

(213.)

Refund of legacy tax.

Claims should be made on Form 46, and by the executor or legatees.—Appropriation for payment of such claims is available.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 14, 1900.

SIR: In reply to yours of the 31st ultimo, addressed to the honorable the Secretary of the Treasury, you are informed that claims for amounts paid in excess or error on legacies can be paid without waiting for additional legislation by Congress. Claims of this character should be made on Form 46 and supported by a copy of the return upon which the tax was assessed by an amended return showing the tax due and by a copy of the will. These claims should be made by the executor of the estate and in his name, if the estate has not been closed. If the estate has been closed, and the executor or administrator has been discharged, the claim may be made either by the executor or by the legatees or heirs at law and in the individual names of the legatees or heirs at law.

Respectfully, G. W. WILSON, *Commissioner*.
Hon. RICHARD OLNEY, *23 Court street, Boston, Mass.*

(218.)

Legacy tax.

Where a legacy exceeds \$10,000 the tax is due on the full amount of the legacy or distributive share, and not on the amount in excess of \$10,000.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 28, 1900.

MADAM: In reply to your letter of the 21st instant, you are informed that Collector J. W. Patterson was correct in requiring legacy tax amounting to \$98.33 on the proposed distribution of \$13,110 in case of the estate of your deceased mother.

Where a legacy exceeds \$10,000 the tax is due on the full amount of the legacy or distributive share, and not on the amount in excess of \$10,000.

Respectfully, G. W. WILSON, *Commissioner*.
Miss M. F. SHERMAN,
Administratrix estate of Laura A. Sherman, Marshalltown, Iowa.

(229.)

Legacy tax.

The tax on legacies is not a tax upon the property, in the ordinary sense of the term, but upon the right to dispose of it. The Supreme Court has held that legacies consisting of Government bonds are not exempt from tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 11, 1900.

MADAM: Your letter of the 5th instant, addressed to the honorable Secretary of the Treasury, requesting information on a point which seems to you obscure, has been referred to this office.

Your question is this: "Are United States bonds liable or subject to the inheritance tax?" You state that—

In a leaflet entitled "Facts about Government Bonds" occurs this sentence: "The fact that United States bonds are not subject to taxes of any character—Federal, State, or municipal—is a valuable feature of that form of investment."

You are informed that it is held that the legacy tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee (*United States v. Perkins*, 163 U. S., 625).

In *Wallace v. Myers* (38 Fed. Rep. 184), it was held that, although the property of the decedent included United States bonds, the tax might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the estate of the decedent, or the privilege of acquiring property by inheritance. It has recently been decided by the United States Supreme Court, in the case of *Plummer, Executor, v. Coler*, where the question involved was the validity of the inheritance tax law of the State of New York when applied to a legacy consisting of United States bonds containing a clause of exemption from State and Federal taxation, that the conclusion fairly to be drawn from the State and Federal cases is that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the State may lawfully measure or fix the amount of the tax by referring to the value of the property passing, and that the incidental fact that such property is composed, in whole or in part, of Federal securities does not invalidate the tax or the law under which it is imposed. (See, also, *Murdock v. Ward*, 178 U. S., 139.) * * *

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mrs. JOHN HAMILTON, Jr., *Fredonia, N. Y.*

(235.)

Legacy tax—Returns.

An itemized statement of legal debts and expenses is required, unless the collector is satisfied that the total amount of such debts and expenses does not contain any item of legacy or distributive share.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 23, 1900.

SIR: In your letter of the 19th instant you state that the representatives of estates located outside of your district, who have been called upon to make returns covering legacies from parties who died in your district, have stated that it is not required in other districts that a statement of legal debts and expenses shall be attached to the return, as provided for in regulations, series 7, No. 3, revised, page 10, and you ask to be advised in the matter.

In reply, you are informed that the itemized statement called for by said regulations must be furnished in cases where legacy taxes accrue, provided you are not satisfied that the amount claimed on Form 419 as legal debts and expenses contains any item of legacy or distributive share. The fact that you may not be satisfied in the matter need not delay the forwarding of the return, Form 419, as the itemized statement may be submitted as soon as received from the proper representative of the estate.

Respectfully,
Mr. H. C. H. HEROLD, *Collector Fifth District, Newark, N. J.*

G. W. WILSON, *Commissioner.*

MIXED FLOUR.

(246.)

Modification of regulation concerning disposition of tax-paid mixed flour upon return by purchaser to manufacturer.

[Circular No. 154.—Int. Rev. No. 585.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 16, 1900.

To collectors of internal revenue and others:

The regulation concerning the return to and disposition of tax-paid mixed flour, by manufacturers, as shown in the fourth, fifth, and sixth paragraphs of page 21 of the regulations concerning mixed flour, series 7, No. 25, is hereby modified, as follows:

Tax-paid mixed flour returned to factory by purchasers of the same may be destroyed by the manufacturer without any record being made upon the Government book, Form 442, of its return or final disposition.

The presence of an officer to witness such destruction will not be required.

When tax-paid mixed flour which has been returned to the manufacturer by the purchaser, is taken up in the manufacturer's material account, it must be entered as a separate item upon the Government book and treated as new material. The stamps on such packages must be entirely destroyed when the packages are emptied.

Packages of tax-paid mixed flour returned as above, which are sold again, must be noted on the Government book when received back and when resold.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary of the Treasury*.

OLEOMARGARINE.

[See DECISIONS (Special Tax Decisions), Nos. 2, 105, 106, 152, 160.]

(31.)

Marking, branding, and stamping packages of oleomargarine.

[Int. Rev. Circular No. 551—Superseded by Circular No. 564.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 1, 1900.

To collectors of internal revenue and internal-revenue agents:

In view of the frequent inquiries received at this office concerning prints, bricks, and rolls of oleomargarine packed in statutory packages, the attention of collectors and revenue agents is invited to the regulations, series 7, No. 9, revised June 18, 1895, Supplement No. 6, dated May 13, 1898.

This regulation clearly indicates—

1. That no device, mark, or brand shall be impressed upon a brick, print, or roll of oleomargarine packed in any statutory package unless the word "Oleomargarine" is also impressed thereon.

2. That no device, mark, or brand shall appear on any wrapper covering any print, brick, or roll of oleomargarine packed in any statutory package unless the word "Oleomargarine" is also marked or printed thereon.

3. That where no device, mark, or brand appears upon such print, brick, or roll, nor upon the wrapper covering the same, the word "Oleomargarine" need not appear either upon the print, brick, or roll, nor upon the wrapper covering the same.

4. That where some device or mark, accompanied by the word "Oleomargarine," is impressed upon such print, brick, or roll, the word "Oleomargarine" must appear upon the wrapper, even though no other mark or brand appear upon the wrapper.

5. Under no circumstances will any manufacturer or dealer be permitted to impress or brand or mark upon any print, brick, or roll of oleomargarine, or on any wrapper covering the same, any device, word, or words calculated to induce the public to believe that it is a product of the dairy, even though the word "Oleomargarine" appear on the same.

6. Manufacturers are not permitted to put up oleomargarine in wooden, tin, pressed fiber, or other vessels as subdivision packages for domestic use. It is only in the case of oleomargarine packed for export that such subdivision packages are permitted.

7. In case of small packages inclosed in statutory packages for export, the marks and brands required on the inner packages must be placed on the packages proper, and not upon an outer covering, or additional or false top or bottom.

In reply to the contention that this office is not authorized to make regulations as to the device, mark, or brand upon prints, bricks, or rolls of oleomargarine, or the wrapper covering the same, this office holds that the law contemplates that oleomargarine shall be packed in packages of not less than 10 pounds each, and that those who avail themselves of the privilege granted by the regulations of this office to put up oleomargarine in prints, bricks, or rolls, and to pack the same in statutory packages, instead of packing the oleomargarine solid in statutory packages, shall not use this privilege to deceive the public.

Collectors will advise manufacturers that all oleomargarine found upon the market, shipped from the place of manufacture after this date, which is not packed, marked, stamped, and branded in accordance with the regulations will be seized as subject to forfeiture.

G. W. WILSON, *Commissioner*.

(108.)

Amending circular 551, relative to marking, branding, and stamping packages of oleomargarine.

[Int. Rev. Circular No. 564.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1900.

To collectors of internal revenue and internal-revenue agents:

In view of the frequent inquiries received at this office concerning prints, bricks, and rolls of oleomargarine packed in statutory packages, the attention of collectors and revenue agents is invited to the following:

1. That no device or brand shall be impressed upon any brick, print, or roll of oleomargarine packed in any statutory package unless the word "Oleomargarine" is also imprinted thereon in letters equal in size to those used in expressing any brand or word used by the manu-

facturer. When no display is made except a device, then the word "Oleomargarine" shall be impressed on such brick, print, or roll in letters not less than one-fourth of an inch square, and in all cases the word "Oleomargarine" shall be equally displayed with any brand or word used by the manufacturer, in close proximity thereto, and on the same surface of such brick, print, or roll.

2. The same rule shall be observed where any device or brand is used upon the wrapper covering any brick, print, or roll of oleomargarine.

3. Manufacturers will be permitted to impress upon their rolls, prints, or bricks marks or embellishments in the way of a finish for the same, without the word "Oleomargarine" appearing thereon, provided said marks or embellishments are first presented in duplicate photographic copies, serially numbered, to this office for approval. The wrappers for these rolls, prints, or bricks may be in blank, but if any mark, device, or brand is used the word "Oleomargarine" must appear in letters one-fourth of an inch square and in close proximity thereto and on the same surface of each brick, print, or roll.

4. Under no circumstances will any manufacturer or dealer be permitted to impress, brand, or mark upon any print, brick, or roll of oleomargarine, or on any wrapper covering the same, any device, word, or words calculated to induce the public to believe that it is a product of the dairy or butter, even though the word "Oleomargarine" appears on the same.

5. Manufacturers are not permitted to put up oleomargarine in wooden, tin, pressed-fiber, stone, or other vessels as subdivision packages for domestic use. It is only in the case of oleomargarine packed for export that such subdivision packages are permitted.

6. In case of small packages inclosed in statutory packages for export, the marks and brands required on the inner packages must be placed on the packages proper and not upon an outer covering or additional or false top or bottom.

In reply to the contention that this office is not authorized to make regulations as to the devise, mark, or brand upon prints, bricks, or rolls of oleomargarine, or the wrapper covering the same, this office holds that the law contemplates that oleomargarine shall be packed in packages of not less than 10 pounds each, and that those who avail themselves of the privilege granted by the regulations of this office to put up oleomargarine in prints, bricks, or rolls, and to pack the same in statutory packages, instead of packing the oleomargarine solid in statutory packages, shall not use this privilege to deceive the public, but must comply with the regulations made in pursuance thereof.

Collectors will advise manufacturers that all oleomargarine found upon the market shipped from the place of manufacture after June 1, 1900, which is not packed, marked, stamped, and branded in accordance with the regulations will be seized as subject to forfeiture.

G. W. WILSON, *Commissioner*.

(127.)

Oleomargarine.

The obligations of a retail dealer in oleomargarine stated.—The primary object of the oleomargarine law is to raise revenue, and the law is constitutional.—Decision in the case of the United States v. Daniel E. Dougherty.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 14, 1900.

To collectors of internal revenue and others concerned:

The appended opinion of the United States district court for the eastern district of Pennsylvania, relating to the obligations of retail dealers in oleomargarine and the constitutionality of the law regulating the manufacture and sale of oleomargarine, is published for the information of officers of internal revenue and others concerned.

G. W. WILSON, *Commissioner.*

UNITED STATES DISTRICT COURT—EASTERN DISTRICT OF PENNSYLVANIA—AUGUST SESSIONS, 1899—No. 20.

United States v. Daniel E. Dougherty.—*Motions in arrest of judgment and for a new trial.*

Two positions are taken in support of the motion to arrest the judgment—first, that the indictment does not set out an offense under the act of 1885 (1 Supp. Rev. Stat., 505), and, second, that the statute is unconstitutional, in so far as it provides for the marking of packages used by retail dealers in oleomargarine, the allegation being that in this respect it is not a revenue measure, but is a police regulation which Congress is said to have no power to enact.

The indictment charges the defendant with unlawful sale, unlawful delivery, and unlawful packing; and in each count the package is described as not a “new” and “suitable” wooden or paper package. The first position is based upon the contention that no such offense is created by the act as a sale, or delivery, or packing, by a retail dealer in other than “new and suitable” packages, and therefore that the indictment does not set forth a criminal act. It is argued that the first penal clause of section 6, so far as it affects a sale or delivery of oleomargarine, can only apply to the manufacturer or the wholesale dealer, because it is the manufacturer who is expressly required, by an earlier clause of that section, to pack in wooden packages “not before used for that purpose”—that is, in packages that are not new—and because all sales by manufacturers or wholesale dealers are directed by the same section to be made in “original stamped packages”—that is, in new packages—while the retail dealer is permitted to sell in a “suitable” wooden or paper package, and, it is said, may therefore sell in a package that is not “new.”

It is further argued that the second penal clause of section 6, which forbids the packing of oleomargarine in any manner contrary to law, does not forbid the retail dealer to pack in a “new and suitable” package, but only forbids him to sell in a package not “suitable,” because in his case no other manner of packing is contrary to law, and, therefore, that a packing charged to have been made not in “new and suitable” packages, is not an indictable offense. The conclusion sought to be

drawn is that, as the indictments charge the defendant, as a retail dealer, with packing, selling, or delivering in packages that were not "new" as well as not "suitable," wooden or paper receptacles, acts thus set forth do not lay him open to a criminal proceeding.

The dispute at the trial was over the marking of packages, and there was not a word of controversy concerning either their newness or their suitability. As a consequence, if the indictments are technically defective for the reason now urged, the defendant has already had one chance of escape before a jury in a trial upon the merits, and must now be given a second chance upon a trial of the same issue under new indictments framed to meet his objections. For I do not agree with the argument that section 6 has been so faultily drawn that a retail dealer is not within its provisions at all, and, therefore, that no subsequent indictment could be successfully sustained. On the contrary, I think that the duties of a retail dealer are described with sufficient plainness by the section in question, and that an indictment in some form or other is maintainable. The present question is whether the indictments now under consideration are good. Let us consider the obligations of a retail dealer. He must not remove the oleomargarine from the original stamped package that has been delivered to him by the manufacturer or by the wholesale dealer until he has agreed with a customer upon the terms of a sale at retail. (The regulations of the Commissioner of Internal Revenue permit him to prepare the article in retail packages, but these must remain in, or at most upon, the original stamped package.) After such agreement to sell, the dealer must pack the pound, or other quantity less than 10 pounds, in a "suitable" wooden or paper package, and the sale becomes complete when delivery is made. What a "suitable" package may be is not defined by the act, but I think the meaning is that a suitable package is such as the dealer himself may reasonably find to be convenient and proper, according to the usages and demands of the trades. Thus far, the retailer's package is not described as "new," although I venture to affirm that no one would regard such a package as "suitable" unless it was also "new;" but when the statute comes to impose penalties for the violation of its provisions, it then declares that "every person"—and this inclusive phrase certainly embraces the retail dealer—must sell and deliver in a "new" wooden or paper package, or suffer the consequences declared by the section. That "every person" includes the retail dealer appears clearly from the considerations that all who sell "in any other form than in new wooden or paper packages" are embraced by the express language of the clause, and that no other person than a retail dealer is allowed to sell in a package made of paper, the manufacturer and wholesale dealer being confined to sales in packages made of wood.

I think there is no inconsistency or contradiction between the two sentences now being considered. In one sentence the package is described as "suitable" (whatever this somewhat vague expression may include), and in the succeeding sentence "suitable" is declared, at least in one of its aspects, to mean "new." When, therefore, the Government used both these words in referring to the defendant's packages, I think it may fairly be said that the newness was only spoken of as one element of suitability, and that there was nothing objectionable in such use of language, in view of the collocation of sentences in the section.

Moreover, I think the very indefinite word "suitable" serves no purpose in the indictment, as it served no purpose at the trial, and may be properly disregarded as surplusage. If the pleader had described the package as not of a proper color or texture or size, no attention would

be paid to such an immaterial averment, and in my opinion no more weight should be given to the averment of suitability. If the defendant is punishable for failure to sell or deliver in a new package—as I think he is—and is not punishable for failing to sell or deliver in a suitable package, the averment of suitability is wholly foreign to the charge and may be disregarded (1 Wharton Crim. Law, 7th ed., sec. 622). But even if the counts concerning sale and delivery are defective, the counts concerning packing are, I think, unquestionably good. These counts charge him with packing in a manner contrary to law, namely, in packages not marked in accordance with the regulations of the Commissioner. Where this is the charge, it is immaterial what kind of a package is used, for section 6 declares it to be an offense to pack in *any* package (without further describing it) any oleomargarine in any manner contrary to law; and, therefore, if the package is not properly stamped or branded, the offense of unlawful packing is committed, whether the package be new or old, suitable or unsuitable. To describe the package as “new and suitable” in such counts is, to my mind, so plainly surplusage that I think nothing further need be said to show that these words may properly be treated as nonexistent. I am not deciding, of course, that the prohibition of unlawful packing may not include more than the use of unmarked packages, but surely that the use of such packages is at least one of the acts that are forbidden by the prohibition.

The defendant's second position may, I think, be sufficiently answered by quoting a short extract from the opinion of Chief Justice Fuller in a recent case arising under the act now in controversy :

“The act before us is, on its face, an act for levying taxes, and although it may operate in so doing to prevent deception in the sale of oleomargarine as and for butter, its primary object must be assumed to be the raising of revenue. * * * The oleomargarine legislation does not differ in character from laws relating to distilled spirits and tobacco, and the object is the same in both, namely, to secure revenue by internal taxation and to prevent fraud in the collection of such revenue. Protection to purchasers in respect of getting the real and not a spurious article can not be held to be the primary object in either instance, and the identification of dealer, substance, quantity, etc., by marking and branding must be regarded as means to effectuate the objects of the act in respect of revenue.” (*In re Kollock*, 165 U. S., 536-537.)

If the principal object of the act is the raising of revenue and not protection to purchasers, as the Supreme Court has thus declared, the argument that Congress has unlawfully invaded the police power of the States must fall to the ground.

The motions in arrest of judgment and for a new trial are both overruled. To the overruling of the motion in arrest of judgment an exception is sealed for the defendant.

(211.)

Regulations governing the marking and branding of packages of oleomargarine for export.

[Regulations No. 9, revised January, 1900.—Supplement No. 1.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 11, 1900.

To collectors of internal revenue:

In order to secure greater uniformity in the marking and branding of packages of oleomargarine for export the following additional regulations are promulgated, under the authority conferred by section 20 of the act of August 2, 1886:

Section 16 of the above-mentioned act provides that oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax, under such regulations and the filing of such bonds and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. It also requires every person who shall export oleomargarine to brand upon each tub, firkin, or other package containing such article, the word "Oleomargarine" in plain roman letters not less than one-half inch square.

In accordance with the provisions of the above-mentioned section, oleomargarine may be removed from the place of manufacture for export to a foreign country in tubs, firkins, or other packages containing not less than 10 pounds of such article, of such material and form as the exporter may elect, provided that the package so used is capable of being and is marked, branded, and stamped as required by law and regulations.

Before the tub, firkin, or other package containing oleomargarine for export is nailed, sealed, or otherwise closed for shipment, it shall be inspected by the collector or his deputy, who shall examine to see that it contains the number of vessels of the kind and capacity set forth in the application for withdrawal, and that the inner packages are branded with the word "Oleomargarine," and if found by him to agree with the statement contained in such application, and otherwise to be in accordance with regulations, he will allow the package to be closed, and shall see that the required marks, brands, and stamps are immediately affixed in the manner prescribed by regulations.

INNER PACKAGES.

Manufacturers may put up oleomargarine in wooden, tin, or other vessels containing not less than one-half pound each, which must, however, be packed in tubs, firkins, or other vessels capable of being marked, branded, and stamped as required by the law and regulations.

The word "Oleomargarine" shall be *conspicuously* marked, branded, or stamped on the top or side of each such inner package in plain roman letters not less than one-half inch square. In cases where printed labels are used for inner packages, containing the name of the manufacturer, etc., or advertising matter such as is permitted by existing regulations, the word "Oleomargarine," in letters not less than one-half inch square, shall be placed in such proximity thereto as to be equally as conspicuous as the advertising matter, and, if desired, may be incorporated in and become a part of such label, whether printed on the package or pasted thereon. In case no such device is used, the word "Oleomargarine" shall be marked, branded, or stamped on the top or sides of the inner package, as described.

It is intended and required that the word "Oleomargarine" shall be as conspicuously displayed as any other matter appearing on the oleomargarine package. The placing of this brand on the bottom of the package where it is most obscure or least likely to be observed, the use of indistinct lettering—applied in a manner to be easily and quickly obliterated, either by the action of the atmosphere or by design—or the use of double or false heads for inside packages, upon one of which the word "Oleomargarine" is not stamped, marked, or branded, with or without intent to evade the law and regulations, will not be considered a compliance with these regulations, and packages so marked or branded will be regarded as having been removed from the manufactory contrary to law and regulations, and, therefore, liable to detention or seizure.

Collectors are directed to see that these regulations are strictly complied with.

G. W. WILSON, *Commissioner*.

Approved:

O. L. SPAULDING, *Acting Secretary of the Treasury*.

(256.)

Use of microscopes by internal-revenue collectors, etc., for the detection of oleomargarine.

[Int. Rev. Circular No. 586.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 11, 1900.

To collectors of internal revenue:

The special attention of collectors is directed to pages 60 to 67, inclusive, of the regulations, No. 9, concerning oleomargarine, and the use of the microscope and reports of examinations, etc.

It has come to the notice of this office that many of the microscopes lie idle in collectors' offices.

It is the desire of this office that the microscopes now in the hands of collectors of internal revenue shall be in constant use. Quarterly reports of collectors on Form No. 246 should show some examinations by the microscope during every quarter.

The instrument, properly equipped for use, should be kept in the hands of the division deputies, and reports on Form 228 required.

Collectors not supplied with the book, No. 63, and blank Form 228, will make requisition for same at once.

ROBT. WILLIAMS, *Acting Commissioner.*

PORTO RICO.

[See DECISION (stamp tax) No. 252.]

(107.)

Exportations to Porto Rico.

Articles subject to internal-revenue tax, exported to Porto Rico from and after May 1, 1900, are not entitled to be exported free of tax, or with benefits of drawback, under internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 23, 1900.

SIR: This office is in receipt of a letter from the Nassau Brewing Company, of your district, submitting the question whether, in view of the recent act of Congress, entitled "An Act temporarily to provide revenue and civil government for Porto Rico, and for other purposes," beer exported to Porto Rico will be required "to be stamped under existing revenue regulations as applied for home consumption, or if the same can be removed under export stamps as heretofore."

In reply, attention was called to Treasury decision 22157, wherein it is held that, in the opinion of the Department, Porto Rico is not a foreign country within the meaning of the (customs) drawback law, and that, therefore, no refund of duty can be allowed by way of drawback on goods exported to that country.

In accordance with that decision, it is held by this office that from and after May 1, 1900 (the date on which the act takes effect), articles subject to internal-revenue tax can not be exported to Porto Rico in bond, or with benefit of drawback of the tax paid, under internal-revenue laws.

You will please so advise the Nassau Brewing Company and such other persons as apply to you for information on this point.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. F. R. MOORE, *Collector First District, Brooklyn, N. Y.*

(109.)

Internal-revenue tax upon articles of merchandise imported from Porto Rico.

[Circular No. 54.—Int. Rev. No. 565.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1900.

To collectors of customs, collectors of internal revenue, and others:

Section 3 of an act entitled "An Act Temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, which goes into effect from and after May 1, 1900, provides, in part, as follows:

That on and after the passage of this Act all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries; and in addition thereto upon articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn for consumption or sale upon payment of a tax equal to the internal-revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps to be purchased and provided by the Commissioner of Internal Revenue and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

Pursuant to the authority conferred by the above provisions of law, the following regulations are prescribed:

TOBACCO, SNUFF, CIGARS, AND CIGARETTES.

The owner or importer of packages of tobacco, snuff, cigars, or cigarettes of Porto Rican manufacture coming into the United States from Porto Rico will be required to affix and cancel suitable internal-revenue stamps on all such packages while they are in the custody of the proper custom-house officer, and the stamps used must be canceled in the same manner as required for the cancellation of stamps affixed to packages containing similar articles manufactured in the United States before removal from the place of manufacture for consumption or sale, the name of the owner or importer being substituted for the factory number, and the internal-revenue regulations, series 7, No. 8, revised, January 20, 1900, concerning taxes on tobacco, snuff, and cigars, in so far as they relate to the mode of affixing and canceling internal-revenue stamps and the sale of stamps to the owners or consignees of such imported articles, are made applicable.

ARTICLES TAXABLE UNDER SCHEDULE B, ACT OF JUNE 13, 1898.

All medicinal articles, perfumeries and cosmetics, wines in bottles for sale, etc., imported from Porto Rico are liable to the stamp tax as similar

articles of domestic manufacture, in addition to the import duty on the same, and the stamps must be affixed by the owner or importer before the same are sold or offered for sale, and affixed in the same manner upon every packet, box, bottle, phial, or other inclosure containing the same.

No exception is made in this respect for articles sold in original and unbroken packages in which the bottles or other inclosures are packed by the manufacturer before the importation. All such must be unpacked for the purpose of stamping the primary package. Importers may, however, supply manufacturers in Porto Rico with internal-revenue stamps, to be there affixed (and canceled) to the respective articles before shipment. (See Treasury decision 19594, volume 2, 1898, and Circular No. 501 revised, Treasury decision 37, dated February 8, 1900.)

SPIRITS.

All brandy and other spirits manufactured or distilled from grain or other materials in Porto Rico, coming into the United States from Porto Rico, and subject to 15 per cent of the duty provided in Schedule H and paragraphs numbered 289, 290, 291, 292, and 293 of an act entitled "An Act to provide revenue for the Government, and to encourage the industries of the United States," approved July 24, 1897, when withdrawn for consumption or sale, will be subject in addition to a tax equal to the internal-revenue tax of \$1.10 per proof gallon.

Upon receipt of distilled spirits from Porto Rico, and collection of the customs duties thereon, the customs collector will at once issue a notice on internal-revenue Form 471, in duplicate, to the collector of internal revenue of the district in which the port is situated, except in case of the port of New York, where the notice will be issued to the collector of the second internal-revenue district of New York. The notice will be in the following form:

Part 1.

FORM 471.

CUSTOM-HOUSE, PORT OF _____,
_____, 1900.

_____, Esq., *Collector of Internal Revenue.*

SIR: You are hereby notified that the following-described spirits imported from Porto Rico by _____, of _____, have been entered at this port and the duties thereon have been paid, but that these spirits will be detained in (here the place of storage will be stated), until the proper tax-paid stamps indicating the payment of the internal-revenue tax thereon have been affixed under your direction:

Number of packages and kind of spirits.	Marks and serial numbers of packages.	Name of importer.

_____, *Collector of Customs.*

Upon receipt of the foregoing notice the collector of internal revenue will at once demand of the importer of the spirits payment of tax on each package on the quantity upon which the customs duty has been paid (as shown by the marks and brands on the package). If the demand is not at once complied with, the collector will report the fact to the Commissioner of Internal Revenue, who will assess the tax which will be collected by distraint as provided by law.

Upon payment of the tax the collector of internal revenue will issue a tax-paid stamp for each package, as in case of spirits which have been withdrawn from a distillery warehouse, and such stamp shall be affixed and canceled by an internal-revenue gauger, who will be detailed by the internal-revenue collector for this special duty, and whose compensation therefor will be determined as provided by section 3157 *c* of the Compilation of the Internal-Revenue Laws of the year 1900.

When the stamps are affixed the gauger will write across the face of each, and also upon the stub, the following words: "Affixed under section 3, Porto Rican act of April 12, 1900."

The gauger will make report of his action to the collector of internal revenue, who will notify the collector of customs, who will thereupon deliver the goods to the importer.

The order of the internal-revenue collector to the gauger, the gauger's report to him, and his notice to the collector of customs should follow, on the same paper in due order, the notice hereinbefore prescribed, as follows:

Part 2.

FORM 471.

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,

District of _____,
_____, 1900.

_____, *U. S. Gauger.*

SIR: You will proceed to _____ and there affix the accompanying tax-paid spirit stamps to the packages above described, imported from Porto Rico, and make report on the form following.

_____, *Collector.*

Part 3.

FORM 471.

I hereby certify that pursuant to the above order the tax-paid stamps above described were affixed and canceled, as required by regulations in Circular No. 565.

To _____, *Collector of Internal Revenue.*
_____, *Gauger.*

Part 4.

FORM 471.

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,

_____, 1900.

SIR: The proper tax-paid internal-revenue stamps having been affixed to the above-described packages of spirits imported from Porto Rico, you are authorized to deliver the said spirits to _____, importer.

To _____, *Collector of Customs.*
_____, *Collector.*

The collector of internal revenue will retain the original on Form 471, and forward the duplicate, including part 4 thereof, to the collector of customs, who, upon receipt thereof, will deliver the spirits (upon which the customs duty and internal-revenue tax have been paid) to the importer.

Further instructions will be given in regard to the manner of depositing the taxes collected on articles of merchandise coming from Porto Rico and to keeping a record of the stamps sold and taxes collected.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary of the Treasury*.

(110.)

Collection of Porto Rican internal-revenue taxes.

[Circular No. 56.—Int. Rev. No. 566.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1900.

To collectors of internal revenue:

It has been provided that on and after May 1, 1900, a tax upon articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be collected equal to the internal-revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture, such tax to be paid by internal-revenue stamps.

To carry out this law, you will sell internal-revenue stamps to importers upon their written or printed orders, made in duplicate, signed by them and indorsed by the collector of customs for the port by his signature following the word "Approved." One of the duplicate orders should be retained by the collector of customs for statistical and such other uses as may hereafter be determined, and he should see that stamps ordered are actually used on articles of Porto Rican manufacture.

Before the stamps are delivered by you they should be stamped in red ink with the initial letters "P. R.," the letters to be of plain, bold-faced gothic type about three-eighths inch in height.

In your accounts, you will treat these sales the same as any ordinary sales, but you will enter in any suitable stock book a record of all such sales, in order that it may be determined at any time the kind and value of stamps that have been sold on account of Porto Rican imports. You will forward a copy of this record with each quarterly collection account.

The money for such sales should *not* be deposited with other funds, but should be deposited separately, "to the credit of the Treasurer of the United States on account of *Porto Rican* Internal-Revenue Collections," for which certificates of deposit in triplicate should be issued

and disposed of as other certificates of deposit are. The words "Porto Rican" *must not* be omitted, as these words will be the distinguishing feature by which the collections "shall not be covered into the general fund of the Treasury, but shall be held as a separate fund, and shall be placed at the disposal of the President to be used for the government and benefit of Porto Rico."

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary of the Treasury*.

(113.)

Exportations to Porto Rico of articles subject to internal-revenue tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 28, 1900.

To collectors of internal revenue:

From and after May 1, 1900, under Treasury decision No. 22157, dated April 17, 1900, the following articles manufactured or produced in the United States can not be exported to Porto Rico in bond without the payment of tax, nor with the benefit of drawback as heretofore, viz: Distilled spirits, stills, and worms; tobacco, snuff, cigars, and cigarettes; fermented liquors; playing cards; oleomargarine; mixed flour; proprietary articles, medicines, bottled wine, and all other products named in Schedule B of the war-revenue act of June 13, 1898.

G. W. WILSON, *Commissioner*.

(115.)

Stamp tax—Passage tickets.

Exemption from stamp tax of passage tickets from ports in the United States to the island of Porto Rico.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 1, 1900.

SIR: I have to acknowledge the receipt of your letter of the 27th ultimo, submitting the question whether, under the act of April 12, 1900, entitled "An Act Temporarily to provide revenues for the relief of the Island of Porto Rico, and for other purposes," passage tickets by any vessel from any port in the United States to Porto Rico are now taxable under Schedule A of the war-revenue act.

In reply, you are advised that, in accordance with a previous ruling (see TREASURY DECISIONS, internal-revenue No. 107), it is held by this office that from and after this date Porto Rico is not to be considered as a foreign country within the meaning of Schedule A of the internal-revenue laws of the United States, and, therefore, passage

tickets from any port in the United States to Porto Rico are exempt from the stamp tax.

The United States internal-revenue laws, not having force and effect in the island of Porto Rico (see section 14, act of April 12, 1900), passage tickets from any port in Porto Rico to any foreign port, or from Porto Rico to any port in the United States, require no stamps under any law of the United States.

Respectfully,
Mr. JAMES H. HAYDEN, *Washington, D. C.*

G. W. WILSON, *Commissioner.*

(155.)

Internal-revenue stamps on imports from Porto Rico.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 18, 1900.

To collectors of internal revenue:

The third paragraph of internal-revenue Circular No. 566 is hereby amended so as to require internal-revenue stamps that are to be used on imports from Porto Rico to be imprinted with the initial letters "P. R.," having a height of about three-fourths of the width of the stamp. The initials should be repeated, especially in the case of cigar stamps, in order that the imprinting may be conspicuous. Red ink should be used.

G. W. WILSON, *Commissioner.*

(203.)

Stamp tax—Manifest for custom-house entry or clearance.

Exemption of such instruments from the stamp tax when relating to vessels to or from ports in Porto Rico.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 18, 1900.

SIR: Your letter of the 13th instant to Hon. O. L. Spaulding, Assistant Secretary of the Treasury, has been referred to this office for answer.

You ask in reference to the taxation of manifests for custom-house entry or clearance of the cargo of vessels for Cuban or Porto Rican ports.

In reply, you are advised that this office has heretofore ruled that from and after May 1, 1900, Porto Rico is not to be considered as a foreign country within the meaning of Schedule A of the internal-revenue laws of the United States, and, therefore, manifests for custom-house entry or clearance of the cargo of any ship, vessel, or steamer to or from any port in Porto Rico are exempt from the stamp tax.

In regard to the manifests for custom-house entry or clearance of the cargo of vessels from or for Cuba, the tax is to be collected, as the ports

in Cuba remain foreign ports the same as they were on July 1, 1898, when the act took effect.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
 Mr. ROBERT CARSON, *Collector of Customs, Perth Amboy, N. J.*

(216.)

Porto Rico.

United States internal-revenue laws are not in force in Porto Rico.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 25, 1900.

GENTLEMEN: In reply to your letter of the 24th instant, you are informed that the United States internal-revenue laws are not in force in Porto Rico.

Section 14 of the act entitled "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, provides as follows:

That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico.

Respectfully, G. W. WILSON, *Commissioner.*
 MESSRS. SCHIEFFELIN & Co., *New York, N. Y.*

RECTIFIER.

(See LIQUOR DEALERS AND RECTIFIERS, p. 157.)

REFUNDING.

See ABATEMENT AND REFUNDING, p. 7.)

SPECIAL-TAX DECISIONS.

[See DECISIONS (TOBACCO), No. 28; 138.]

BANKS AND BANKERS.

(See also DECISIONS, BROKER, No. 12.)

(119.)

Preparation of the special assessment list for bankers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 5, 1900.

To collectors of internal revenue:

Paragraph 9, Circular 554, provides for a special list, Form 23, for bankers, to be a special list for June and to be forwarded on or before the 10th day of July with the regular list for June, etc.

It appears to be practically impossible to complete the special list for bankers before the 10th day of July, as bankers may make their returns without penalty as late as July 31. The following regulations are therefore substituted for those prescribed in paragraph 9, Circular 554.

1. Each collector will, on or before the 10th day of July, forward, with the original and duplicate of the regular list for June, the *triplicate of the special list for bankers*. The collections on this list made in June will be shown in detail in column 11, the heading of which will be changed to read "Supplemental bankers' list" for June, and all collections made in June will be entered therein on the proper line as provided in paragraph 1, Circular 554. The total of this column will be entered on line 3½ (interlined), part 2, Form 23½, after the words "Add amount of supplemental bankers' list for June, 1900." The total on line 5 of the receipt, part 2, Form 23½, will include, besides the amount on line 3½, the amount on line 3 for the month of May, and the amount on line 4 of the supplemental list for June (the regular list). As soon as the amount stated on line 3½ of part 2, Form 23½, for May, is found to agree with column 11 of the triplicate special assessment list for bankers, the triplicate will be returned to the collector to be retained by him.

2. The original and duplicate of the bankers' special list will, after July 31 and before August 10, be forwarded to this office with the regular list, Form 23, for July, and the collections on the bankers' list made in July will be included in line 3½ and the collections on the regular list on line 4 of the collector's receipt, Form 23½, will be entered as the collections made in June were entered on the next preceding list.

3. Where the original of the bankers' list, Form 23, for June is returned to the collector in August, after the assessments are made in August, it will be accompanied by a certificate, part 1 on Form 23½, in duplicate, in which the whole amount assessed, less the amounts included on line 3½, part 2, of the next two preceding receipts will be stated, and the collector will receipt for this amount on lines 3 and 5, part 2 of the Forms 23½ so forwarded in August.

Three copies of Form 23½, numbered, respectively, 1, 2, and 3, have been sent to collectors, and are to be considered with the paragraph in this circular bearing the same number.

G. W. WILSON, *Commissioner*.

(123.)

Special tax—Banks.

A new special tax is not required when a State bank is converted into a national bank under the provisions of section 5154, Revised Statutes, without affecting its identity, there being simply a change of name and a change of jurisdiction.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 11, 1900.

SIR: Your letter of the 7th instant, in regard to the Bank of Holland Patent, which was a State bank and was converted into a national bank on the 21st of April, 1900, has been received.

A ruling is desired as to whether the said national bank should file a return on Form 457 and pay special tax for the three months ending June 30, 1900.

You are informed that if the State bank, in accordance with the provisions of section 5154, Revised Statutes, became a national bank, and its name was changed accordingly without affecting its identity, and it has the same capital, the same officers, and the same stockholders, doing business uninterruptedly under a change of jurisdiction, retaining its right to sue upon obligations or liabilities incurred to it by its former name, it is held to be one and the same bank which has already paid a special tax, and another special tax is not required.

Respectfully, G. W. WILSON, *Commissioner*.

Mr. CHAS. C. COLE, *Collector Twenty-first District, Syracuse, N. Y.*

(130.)

Special tax—Bankers.

Building and loan associations making loans on collaterals to their own members only, and paying withdrawals of small amounts on demand upon receipts of their own members from whom they receive such deposits of money, are not by reason thereof liable to special tax as bankers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 15, 1900.

SIR: This office is in receipt of two letters from James M. McKay, secretary of the Home Savings and Loan Company, Youngstown, Ohio, under date of the 8th instant (who has to-day been referred to you), concerning the questions as to the special-tax liability as bankers of building and loan associations upon facts submitted by him.

Upon the facts which he states you will please advise him as follows:

1. A building and loan association making loans only to its members does not become liable to special tax as a banker by reason of accepting

as security for such loans stocks, bonds, or other collateral ; but it must be clearly shown that such loans are strictly confined to its own members and are not made to any other persons.

2. A building and loan association does not make itself liable to special tax as a banker by permitting withdrawals under certain rules and for paying withdrawals of small amounts on demand upon receipts of its own members, from whom (and from no other persons) it receives such deposits of money.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. FRANK McCORD, *Collector Eighteenth District, Cleveland, Ohio.*

(227.)

Special tax—Banker.

A person who sells his personal checks is not required to pay special tax therefor as a banker.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., October 10, 1900.

SIR: Your letter of the 26th ultimo has been received, inclosing a letter from your deputy, Mr. Jacob Gish, reporting that John Wadman, a dealer in general merchandise at New Germany, Minn., has involved himself in special-tax liability as a banker by reason of the fact that he has been engaged in selling his own checks.

If Mr. Wadman has not opened credits at his place of business upon the deposit or collection of money, subject to be paid or remitted upon draft, check, or order, and has not advanced or loaned money on the collateral security of stocks, bonds, bullion, bills of exchange, or promissory notes, nor received these securities belonging to other persons for discount or sale, he has not subjected himself to special tax as a banker. These sales of his personal check to customers do not bring him within any one of the three branches of business declared to be banking business by the first paragraph of section 2 of the act of June 13, 1898.

Respectfully,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. F. VON BAUMBACH, *Collector Internal Revenue, St. Paul, Minn.*

BILLIARDS, POOL TABLES, ETC.

(173.)

Special tax—Pool table.

Proprietors of safety lynn tables held liable to special tax as proprietors of pool tables.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., July 6, 1900.

SIR: The claim of Waller & Gills, of Kansas City, Mo., for the refunding of \$5, paid as special tax as proprietors of a pool table for the year ending June 30, 1899, is hereby rejected.

Messrs. Waller & Gills ask this refunding on the ground that the table used by them was not a pool table, but a safety lynn table. From a description furnished by the claimants of the safety lynn table, this office rules that proprietors of safety lynn tables are liable to special tax as proprietors of pool tables.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. F. E. KELLOGG, *Collector Sixth District, Kansas City, Mo.*

(205.)

Special tax—Pool tables.

Proprietors of any tables on which games of pool are played, even if these pool games differ in some respects from the ordinary games of pool, must be required to pay special tax thereon.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 28, 1900.

SIR: I have received your letter of the 3d instant, referring to the ruling of this office in letter of the 20th ultimo that proprietors of the Klondike pool table are required to pay special tax on each of these tables "open to the public," in contemplation of the ninth paragraph of section 2 of the act of June 13, 1898.

Although, as you state, these tables are to all intents and purposes similar to the tivoli table referred to in ruling 20126, nevertheless if the Klondike pool table is, as its name indicates, a table on which games of pool are played, even if these pool games differ in some respects from the ordinary games of pool, it must still be held that the proprietors thereof must pay special tax.

The ruling 20126 was intended to relate only to tivoli tables used for playing games essentially different from games of pool or billiards. If there is any tivoli table open to the public on which games of pool are played, the table does not come under ruling 20126, but under ruling 19871, and special tax is required to be paid therefor.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

(231.)

Special tax—Bowling alleys and pool tables.

Where sworn return has been made and special-tax stamps have been issued for bowling alleys only, and thereafter the proprietor discontinues the use of the bowling alleys and substitutes pool tables for them, these special-tax stamps can not be made to answer for such tables.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 12, 1900.

SIR: Your letter of the 29th ultimo has been received concerning a person in your district who holds special-tax stamps for two bowling

alleys and has discontinued the use of his alleys and desires to substitute two pool tables for them and use the same stamps.

As his sworn return was made for two bowling alleys, and the special taxes were collected, and the stamps issued for bowling alleys, there is no warrant of law for permitting these stamps to answer for an entirely different business conducted by him as proprietor of pool tables. In the face of his return, made as proprietor of bowling alleys only, the stamps issued thereon could not protect him in case prosecution should be instituted against him for conducting pool tables without having paid special tax therefor, as required by law.

Respectfully, G. W. WILSON, *Commissioner.*
 Mr. H. A. RUOKER, *Collector Internal Revenue, Atlanta, Ga.*

(259.)

Special tax—Pool tables.

Special tax is required to be paid for the tables called the Klondike, the Stevens, the Manhattan, the safety lynn, and the tivoli peg pool tables, the games played thereon being recognized by billiard players as among the various kinds of pool games.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 21, 1900.

SIR: Your letter of the 5th instant has been received, transmitting a report made by Deputy Collector Kirkpatrick, concerning tables on which games are played by the use of balls and billiard cues.

He transmits with his letter newspaper cuts of these various tables, which, under the names of the Klondike, the Stevens, the Manhattan, the safety lynn, and the tivoli peg pool tables, he says, are "all practically one and the same kind of table," the games played on which are recognized by "billiard players as among the various kinds or forms * * * of pool games."

For all these tables, therefore, which are "open to the public with or without price," it is held that special tax must be paid under the ninth paragraph of section 2 of the act of June 13, 1898, as construed in ruling 205, dated August 28, 1900 (TREASURY DECISIONS, August 30, 1900, p. 13).

Respectfully, J. W. YERKES, *Commissioner.*
 Mr. L. A. THRASHER, *Milwaukee, Wis.*

BROKERS.

(See, also, DECISIONS, Tax on brokers' contracts, No. 116-191.)

(12.)

Special tax—Broker.

Where an officer of a bank holds a membership in a stock exchange as agent for his bank, and the business done by him on the stock board is the bank's business, neither he nor his bank is required to pay special tax therefor as a broker, the bank being exempt therefrom by the express provision of the statute defining brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

SIR: Your letter of the 20th ultimo has been received, inclosing a letter from Mr. John V. Clarke, president of the Hibernian Banking Association, submitting the question whether he or his bank is required to pay special tax as a broker by reason of the fact that he, as "an officer of the bank, and at the request of the Board of Directors," has "held a membership in the stock exchange for the benefit of the bank." He says:

This membership was paid for by the bank. The annual dues on the same are paid by the bank. It is carried as an asset of the bank; and I hold it as trustee for the bank.

Upon this state of facts you may inform Mr. Clarke that neither he nor the Hibernian Banking Association is required to pay special tax as a broker. The business of a broker transacted by him at the stock exchange is his bank's business, done by the bank through him as its agent; and the requisite special tax having been paid by the Hibernian Banking Association as a bank, it is, under the express provision of the statute, exempt from special tax as a broker for carrying on the business of negotiating purchases or sales of stocks or other securities contemplated by the second paragraph of section 2 of the act of June 13, 1898.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

(70.)

Special tax—Brokers—Public warrants.

A single instance of the purchase or sale of securities (or occasional instances of such transactions) is not sufficient to constitute the business of a broker, in contemplation of the statute, and special tax is not required to be paid therefor.—Public warrants, even though transferred before payment, do not require a stamp under the internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 14, 1900.

SIR: Herewith is returned to you at your request the newspaper clipping which you transmitted to this office with your letter of the

7th instant, wherein it is stated that "the terms of the new revenue law are such that any person who buys a note, township warrant, or any other variety of negotiable instrument, even though he purchases but a single warrant, and that for a very small amount, becomes in the meaning of the law a broker, and as such is required to take out a license," and that "every person who has purchased a township warrant is, strictly speaking, a violator of the law, and subject to a heavy fine."

The statement is completely erroneous. No person is required to pay special tax as a broker under the war-revenue act unless it is his "business * * * to negotiate purchases or sales" of securities. Under the decision of the Supreme Court the word "business" is to be regarded as the controlling word in this definition; and a single instance of the purchase or sale of securities (or rare or occasional transactions of this kind) is not sufficient to constitute the business contemplated by the statute.

It is further set forth in this newspaper clipping, that "public warrants drawn on a public treasurer are not required to bear revenue stamps when presented by the drawee; but if the warrant is transferred before payment, it becomes a negotiable instrument, and must have revenue stamp affixed."

This statement is also erroneous. It is held that internal-revenue stamps are not required on these public warrants, even when transferred before payment.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. D. LEWIS, *President Jansen Bank, Jansen, Nebr.*

(112.)

Special tax—Broker.

Mileage books are not "securities" within the meaning of paragraph 2, section 2, act of June 13, 1898, defining brokers, and special tax of a broker is not required to be paid for their purchase and sale.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1900.

SIR: In reply to the inquiry addressed to you by a merchant, Mr. A. P. Russell, of Buckhannon, W. Va., which you referred to me in your letter of the 21st instant, you will please inform him that if he should as he contemplates, "engage in buying and selling mileage books for the accommodation of his customers, making a small advance of one half of one per cent in the transaction," he would not thereby involve himself in special-tax liability as a broker, as "mileage books" are not "securities" such as are referred to in the definition of a broker in the second paragraph of section 2 of the act of June 13, 1898.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. A. B. WHITE, *Collector Internal Revenue, Parkersburg, W. Va.*

(128.)

Express companies—Sales of money orders and travelers' checks.

Brokerage is not the business of the express companies; they are carriers, and the issuing of money orders and travelers' checks is a mere incident to the business of carriers, the companies for a consideration issuing their own orders, upon themselves, for the payment of money upon presentation to their authorized agents. They are not liable on this account for special tax as brokers under the second paragraph of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 15, 1900.

To collectors of internal revenue and others:

The appended opinion of the Attorney-General on the question of the special-tax liability of express companies as brokers on account of their issuance of money orders and travelers' checks is published for the information of all concerned.

G. W. WILSON, *Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., May 14, 1900.

The SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of yours of the 7th of November, 1899, requesting my opinion as to whether certain express companies are liable to tax as brokers under the provisions of the act of June 13, 1898, known as the war-revenue act.

These companies, through their agents at various offices, issue what are known as "money orders" and "travelers' checks." The money orders issued by the several companies differ somewhat in form, but are substantially to the effect that the company issuing the same will transmit and pay to the order of the person named in the face of the order the highest printed marginal amount (not exceeding ——— dollars) as per conditions thereon. The order then contains the name of the place at which the same is issued, the date, the name of the officer or agent of the company who issues the same, the name of the place at which payable, and also the name of the remitter. These orders are so drawn that they will be cashed, upon presentation, by the officers or agents of the company issuing the same at the designated place of payment, and it also appears that, in some instances, the banks cash them.

What are called "travelers' checks" differ from the money orders in that they are more simple in form, do not name a place of payment, being in substance as follows: "The ——— Express Company will pay to the order of (name of payee) ——— dollars," and are dated and signed by the treasurer or other authorized agent of the company issuing the same. These checks are paid upon presentation to the agents of the company by which they are issued, in this country or in foreign countries, to suit the convenience of the holders, and are also cashed by the banks in the ordinary course of business.

The express companies charge specified rates for issuing money orders and travelers' checks according to the amounts named severally therein. These rates, together with the amount called for by the orders or

checks are paid by the persons to whom they are issued, to the agents of the company from which the orders or checks are obtained.

The question upon these facts is whether or not express companies, by reason of this manner of dealing, are subject to tax as brokers under this provision of the war-revenue act:

"Brokers shall pay fifty dollars. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for themselves or others, shall be regarded as a broker: *Provided*, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker."

From the definition of a broker given in the above statute, it would seem that the only view in which the transactions of the express companies before described can come within the meaning of the law is to hold that, in issuing the orders and checks referred to, the companies negotiate sales of exchange or of promissory notes.

Mr. Daniels defines a bill of exchange to be "an open letter addressed by one person to a second, directing him, in effect, to pay absolutely and at all events a certain sum of money therein named to a third person or to any other to whom the third person may order it to be paid, or it may be payable to bearer or to the drawer himself." Blackstone's definition is: "An open letter of request from one man to another desiring him to pay a sum of money therein named to a third person on his account." Mr. Tiedeman describes a bill of exchange as follows: "A bill of exchange is an unconditional written order by one person on another, directing him to pay a third person or to his order, or to the bearer, the sum of money therein named."

It has been held in the case of *Merchants' Bank v. State Bank* (10 Wall., 604) that "Bank checks are not inland bills of exchange, but have many of the properties of such commercial paper; and many of the rules of the law merchant are alike applicable to both. Each is for a specific sum payable in money. In both cases there is a drawer, a drawee, and a payee. Without acceptance, no action can be maintained by the holder upon either against the drawee. The chief points of difference are that a check is always drawn on a bank or banker. No days of grace are allowed."

The instruments issued by the express companies do not come within the legal definition given of either bills of exchange or checks. They are not bills of exchange, because they are not drawn by one person upon another, directing the payment of a certain sum of money to a third person, nor do they require acceptance before suit can be maintained against the drawee for nonpayment; and they differ from checks in that they are not drawn upon a bank. They are simply the promises or obligations of the companies to pay certain sums of money to the persons therein named, and, therefore, possess more the characteristics of promissory notes than otherwise. This is particularly true of travelers' checks, for they are in the usual form of a promissory note.

I readily conclude, therefore, that in issuing money orders and travelers' checks such as are being considered, the companies do not negotiate sales of exchange either for themselves or others. It then remains to be seen whether or not the companies are liable to tax as brokers on the ground that they negotiate sales of promissory notes.

The broker is understood generally in the law to be an agent and not a principal. He does not have possession of the property and does not deal in his own name. The addition of the words "for themselves" in

the act has been construed by the courts so as to make one who buys and sells stocks, bonds, etc., for himself a broker. This decision does not, however, affect the character of the business of broker—that is, the business of negotiating purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, and other securities. To constitute a broker the corporation or person must negotiate purchases or sales, or both purchases and sales, of one or all of the classes of property named. Now, do the express companies negotiate sales or make sales of promissory notes? I think not. A sale of property for a consideration and the subsequent transfer of ownership is one thing, and the delivery of a contract for the payment of money by the maker to the payee is another. The latter transaction is not a sale.

It appears from the facts and exhibits in this case that money orders and travelers' checks issued by express companies are practically a substitute for the actual transmission of money from one point to another. Formerly the plan in use was to ship the money delivered to the carrier by the shipper to the consignee at the point of destination. As a more convenient method, in case the proposed shippers desire it, the companies have adopted this system of money orders payable at the place to which, and to the person to whom, the amount is to be sent. This business since its inception has greatly enlarged, and, in addition to the money orders, travelers' checks are also issued, which are payable at any of the offices of the company by which the same are issued. In the course of time the banks have also begun to handle these orders in some instances, and the checks generally, as they do ordinary commercial paper.

Section 3407 of the Revised Statutes defines a bank or a banker as "a place of business * * * where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale." In construing this section, the Supreme Court, in *Selden v. Equitable Trust Company* (94 U. S., 419), holds that "A corporation whose business is confined to the investment of its capital in bonds secured by mortgage on real estate, and to the negotiation, sale, or guaranty of them, is not a bank or a banker within the meaning of" said section. In the course of its business, which was to invest its capital, the corporation loaned money and took bonds and promissory notes secured by mortgage, and it also received bonds and promissory notes so taken and secured, for the purpose of negotiating sales of them. And yet the Supreme Court held that this was merely incidental to the business of the corporation, and therefore did not make it a bank or a banker.

Brokerage is not the business of the express companies; they are carriers, and the issuing of money orders and travelers checks is a mere incident to the business of carriers, the companies for a consideration issuing their own orders, upon themselves, for the payment of money upon presentation to their authorized agents.

My opinion is, therefore, that the transactions described do not bring the companies within the terms of the law which defines a broker, and that they are not liable to the broker's tax under the provisions of the war-revenue act above quoted.

Respectfully, JAS. E. BOYD, *Assistant Attorney-General.*

Approved: JOHN W. GRIGGS, *Attorney-General.*

(145.)

Special tax—Broker—Tax titles.

The special tax of a broker is not required to be paid for the purchase or sale of tax titles.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 4, 1900.

SIR: Your letter of the 30th ultimo has been received, asking "Is there a license required to buy tax titles?"

Tax titles are not understood to be "securities" in contemplation of the second paragraph of section 2 of the act of June 13, 1898, defining brokers. Such being the case, the special tax of a broker is not required to be paid for their purchase or sale.

Respectfully, G. W. WILSON, *Commissioner.*

Mr. THOMAS S. MARSHALL,
Cashier of the Salem National Bank, Salem, Ill.

(150.)

Special tax—Broker—Rare coins.

The purchase and sale of rare coins is held not to be the business of a broker, as defined by the statute.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 6, 1900.

SIR: Your letter of the 31st ultimo has been received, stating that Elias McMagnas, of St. Louis, desires to become a dealer in rare coins, and asking whether he would thereby involve himself in liability as a broker.

It is held by this office that he would not. A person who buys and sells rare coins which are no longer in use as money, but have a special and arbitrary value attached to them by numismatists, and are bought and sold as curios, is, in the opinion of this office, not to be regarded as a dealer in coined money within the meaning and intent of the second paragraph of section 2 of the act of June 13, 1898, defining a broker.

Respectfully, G. W. WILSON, *Commissioner.*

Mr. H. C. GREENER, *Collector First District, St. Louis, Mo.*

(156.)

Special tax—Broker.

A person who makes it his business to buy securities, even for himself only, without selling them, is a broker in contemplation of the statute and required to pay special tax accordingly.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 13, 1900.

SIR: Mr. E. E. Wilson, a lawyer of Corvallis, Oreg., has submitted to this office the question whether the special tax of a broker is required to be paid in the following case:

A retired merchant, who lives off the interest of his money, but has no office other than his residence, buys county warrants whenever he can and makes no concealment of the fact that he desires to purchase warrants, and it is generally known in the immediate community that he will buy warrants, and when he knows of a warrant being issued may solicit its purchase, *but who never sells a warrant that he has bought.*

If the merchant thus referred to is, as appears, regularly and constantly engaged throughout the year in making purchases of these securities, he must be regarded as making that his business or a material part of his business from which he derives his living; and as the statute defining brokers requires every person whose business it is to negotiate purchases or sales of securities to be regarded as a broker, this merchant must be required to pay special tax as a broker, notwithstanding the fact stated, that he never sells the securities bought by him.

Until there shall have been a judicial decision warranting a contrary construction of the statute defining brokers (paragraph 2, section 2, act of June 13, 1898), this office must hold that the words "whose business it is to negotiate purchases or sales" of securities "for themselves or others" mean that a person who makes it his business to buy securities, even for himself only, without selling them, is a broker, and that the language quoted does not mean that a person must both buy and sell securities in order to become liable as a broker within the meaning and intent of the statute.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. D. M. DUNNE, *Collector Internal Revenue, Portland, Oreg.*

(174.)

Special tax—Commercial brokers—Brokers.

A person whose business it is, upon orders from his customers, on commission, to negotiate purchases or sales of wheat or other merchandise and purchases or sales of stocks, bonds, etc., even though he makes such purchases or sales in his own name only, not disclosing the names of his customers, is required to pay special taxes as a broker and commercial broker.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 6, 1900.

SIR: In reply to your letter of inquiry of the 29th ultimo, you are hereby informed that the old ruling to which you refer has been modified, and it is now held that persons whose business it is, upon orders from customers, to negotiate purchases or sales of wheat, or other merchandise, on commission, even though they conduct such negotiations in their own names only, not disclosing the names of their customers, are nevertheless commercial brokers and required to pay special tax accordingly. The same ruling, of course, applies to the business of buying or selling stocks, etc.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. J. S. RIZOR, *Wabash, Ind.*

(180.)

Special tax—Commercial brokers.

Persons whose business it is to buy or sell grain (or other merchandise) on commission on orders received from customers are commercial brokers and required to pay special tax as such, even when they negotiate such purchases or sales in their own names only (the grain or merchandise not being received into their actual possession).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 18, 1900.

SIR: Your letter of the 13th instant has been received, inclosing a letter from Churchill & Co., of Toledo, submitting the following statement of their transactions, on which they urge that they are not required to pay special tax as commercial brokers, namely:

If we have a customer in the country who sends us an order to sell 10,000 bushels of wheat for September delivery, we sell it to some member of our exchange and stamp the contract at the rate of 1 cent for every \$100 that it would be worth at the price sold. Our customer is not known in the transaction at all. He would send us, say, 5 cents a bushel as margin to protect us against any loss on the market. In case he should desire to buy this grain back any time before September 30, he pays us a commission for making the trade, the same as he would had he shipped the grain into Toledo. We pay stamp tax on the contract the same as if the grain was delivered.

The difference between ourselves and a broker in handling the busi-

ness is that a broker sells for one party to another, and after the trade is made he is out of the deal and has no responsibility in the matter, while we are held responsible by the firm we sell to for any loss there may be incurred by a failure to fill the contract, as the contract is made in our name and we are held as principals.

The same condition applies when we buy grain in the country for deferred shipment.

The business thus described by Churchill & Co. is that of buying or selling grain upon orders received from their customers, for which they pay Churchill & Co. a commission. Although they carry out these transactions in their own name, it is held that they are commercial brokers, and must pay special tax accordingly.

You will, therefore, without further discussion of this question, call upon this firm and other firms engaged in like business for the requisite special-tax return before the expiration of this month, informing them that if they fail to make such return within this month it will become your duty to report the cases in your next list for assessment of the special tax and 50 per cent penalty.

If it is the desire of Churchill & Co., or any other firm, to test the correctness of the ruling of this office on this point, they are at liberty to do so by suit in court, after payment of the special tax and rejection of their claim for the redemption of the special-tax stamp issued.

Respectfully,

G. W. WILSON, *Commissioner*.

MR. GEORGE P. WALDORF, *Collector Tenth District, Toledo, Ohio.*

EXHIBITIONS AND SHOWS.

(21.)

Special tax—Local exhibition.

A "home talent" exhibition given for the benefit of a school, or by a ladies' sewing circle, for a public benefit, is not among the "public exhibitions or shows for money" for which special tax is required to be paid.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 24, 1900.

SIR: In reply to your letter of the 17th instant, you are hereby informed that special tax is not required to be paid under the war-revenue act of June 13, 1898, in the cases to which you refer, wherein, as you state, a school "makes up an exhibition of home talent and charges entrance fees, the proceeds to benefit the school," or "a ladies' sewing circle * * * makes up an exhibition of home talent, and charges spectators for entering, the proceeds being for a public benefit."

These are, in the opinion of this office, not to be regarded as among those "public exhibitions or shows for money" contemplated by the eighth paragraph of section 3 of the act of June 13, 1898; and there is,

therefore, no violation of the internal-revenue laws of the United States in giving such exhibitions without a special-tax stamp.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. BEN. E. SYLVESTER, *South Bluehill, Me.*

(22.)

Special tax—Exhibition or show.

A company giving exhibitions of pictures to which an admission fee is charged for the pecuniary profit of the company is required to pay special tax under the eighth paragraph of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 24, 1900.

SIR: In reply to your letter of the 19th instant, concerning the United States Picture Company, who has made application, under protest, for a special-tax stamp on account of a show given by them, in regard to which you say: "Their exhibition is a series of metascope pictures of the Spanish war and the war in the Philippine Islands, for which they charge admission fee," you are hereby informed that if this exhibition is given by this company for its pecuniary profit, it is held by this office to be a public exhibition or show for money within the meaning of the eighth paragraph of section 2 of the act of June 13, 1898; and, upon such a state of facts, you have correctly informed the agent of this company, Mr. Hoover, that he is involved in liability under that paragraph of the statute.

In accordance with your suggestion, a copy of this letter has to-day been sent to Mr. J. Hoover, New Matamoras, Ohio.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. B. E. GUYTON, *U. S. Commissioner, Marietta, Ohio.*

(26.)

Special tax—Poultry show.

Special tax is not required to be paid for a poultry show to which an admission price is charged simply to pay the expenses, and not for the pecuniary profit of the association giving the show or of any of its members.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 27, 1900.

SIR: Mr. George Taysum, secretary of the Utah Poultry Association, of Salt Lake City, Utah, in a letter to this office, dated the 18th instant, states that they have been called upon by the deputy collector of internal revenue there to pay special tax under the eighth paragraph of

section 2 of the act of June 13, 1898, and he inquires whether his association is required to pay this special tax. He says:

We hold an annual poultry show in this city every year in January. * * * The admission fee is charged at the door in order to make enough money to pay the expense of running the show. * * * Should we in any way run behind in our expenses on holding one of these shows, each individual member is held liable for his share of the shortage.

As the poultry show, as it appears, is not given for the pecuniary profit of the association or of any of its members, and the association, as Mr. Taysum states, is "organized for the purpose of creating interest in poultry for the State of Utah," it is held by this office that its exhibition of poultry, though an admission price thereto is charged for the purpose of covering its expenses), is not among the public exhibitions or shows for money contemplated by the statute, and that consequently special tax is not required to be paid therefor.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. CHAS. M. WEBSTER,

Collector Internal Revenue, Helena, Mont.

(47.)

Special tax—Exhibition.

A national soldiers' home is not required to pay special tax for employing theatrical companies to give performances, for admission to which a price is charged, the proceeds being devoted to the amusement fund of the home; but the proprietor or agent of every such company giving exhibitions for money must hold the requisite special-tax stamp under the eighth paragraph of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., February 19, 1900.

SIR: Your letter of the 15th instant has been received, asking whether the National Soldiers' Home at Hampton, Va., is required to pay special tax under paragraph 8 of section 2 of the act of June 13, 1898, upon the facts which you state that it "frequently employs outright traveling shows, or theatrical companies, chiefly for the amusement of the inmates of said institution, but a few outsiders are usually admitted, who pay for their seats as they would at any other place of amusement, the proceeds being devoted to the amusement fund."

The National Soldiers' Home is not required to pay special tax on this account. But the proprietors or agents of the traveling shows or theatrical companies who, as it is understood, are giving these shows for money and for their own pecuniary profit, must hold the requisite special-tax stamp under paragraph 8 to cover these exhibitions in each State in which they are given.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. JAMES D. BRADY, *Collector Second District, Richmond, Va.*

(148.)

Special tax—Show.

A "concert or aftershow" given in the principal tent at the conclusion of the main show to those who choose to remain, paying a small sum in addition to the cost of the ticket to the main show, is held not to be a separate show for which an additional special tax is required to be paid.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 5, 1900.

SIR: Your letter of the 28th ultimo has been received, stating that in addition to the small wagon show, for which you pay special tax, you have a side show, for which you pay an additional special tax, holding a separate special-tax stamp for each, but that after your main show in your principal tent you give a concert "under the same tent, * * * and tickets are only sold to people who are in the big show, not sold outside of the tent and only while the show is going on;" and that "it is not a separate show, but a continuation of the same show, only the first ticket is not good for but part of it and people understand that when they buy."

Upon this statement of the facts, this office, as at present advised, does not regard this "concert or aftershow" as a separate show for which another special tax is to be paid. The special-tax stamp held for the main show is to be regarded as sufficient to cover this aftershow.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. B. F. GOLLMAR, *Baraboo, Wis.*

(225.)

Special tax—Exhibition on a boat.

In case of an exhibition or show for money given on a boat moving from place to place on rivers, the proprietor must hold a special-tax stamp for each State in which the boat lands and such exhibition is given.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 9, 1900.

SIR: In reply to your letter of the 2d instant, stating that you are "requested to issue a special-tax stamp for a public exhibition, being an entertainment by a single phonograph, for which an admission is charged, maintained on a boat traversing the Mississippi River and its tributaries," you are hereby advised that the special-tax stamp should be issued by you for this exhibition expressly for the State of Missouri. The special-tax stamp then, under the statute, will be good for any landing place within that State. When the boat lands at any place in another State, the proprietor of the exhibition must take out a special-

tax stamp for that State, and so on. A special-tax stamp must be taken out for each State in which this boat lands and the exhibition is given.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

(230.)

Special tax—Exhibition.

Singing and playing on the public streets to attract a crowd for the sale of medicine can not fairly be regarded as an exhibition or show for money within the meaning of the eighth paragraph of section 2, act of June 13, 1898, and special tax is not required to be paid therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 11, 1900.

SIR: Your letter of the 5th instant, inclosing a letter from Mr. M. Oppenheimer, a patent-medicine vender whom you have called upon to pay special tax as the proprietor of a public exhibition for money, basing your action upon ruling 19749, has been received.

Mr. Oppenheimer in his letter says:

I do not claim to give a show. The people pass along the street, and if they choose to, they can stop and hear me talk and sing. My partner plays a guitar and talks and sings as I do.

As this is done upon the public street, and not in any tent or edifice to which a price of admission is charged, the ruling (No. 19749) is not applicable to the case, and in the opinion of this office, this singing and playing upon the public street, for the purpose of attracting a crowd and selling medicine, can not fairly be regarded as constituting an exhibition or show for money such as is contemplated by the eighth paragraph of section 2 of the act of June 13, 1898. You will, therefore, withdraw the demand notice in this case.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. H. L. REMMEL, *Collector Internal Revenue, Little Rock, Ark.*

(251.)

Special tax—Street fairs.

Special tax is not required to be paid by an association of citizens of any town or city for street fairs given by them without pecuniary profit to the association or any member or officer thereof.—Proprietors or agents of shows hired by the association, to which a price of admission is charged, must themselves hold the special-tax stamp contemplated by the eighth paragraph of section 2, act of June 13, 1898, for each public exhibition or show for money.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 26, 1900.

SIR: I have received your letter of the 16th instant, relating to three exhibitions given by the Gainesville Street Fair Association, and

inclosing a copy of an affidavit made by Mr. John King, of that association, wherein he says:

That on or about the 6th of October, 1900, when the citizens of Gainesville met they agreed to give a free street fair, and to draw attraction to said fair they engaged minstrels, vaudeville people, and opened a race track, charging at each entrance an admittance, which is used to defray the expenses of the fair. Knowing that these shows would not bring sufficient revenue to cover our expenses, we agreed to pay the balance by private contributions.

Upon this statement you are hereby advised that the Gainesville Street Fair Association is not required to pay special tax under the eighth paragraph of section 2 of the act of June 13, 1898, as it has not been engaged in giving any exhibition for the pecuniary profit of the association or of any member or officer thereof. It differs in this from agricultural associations.

To the further inquiry which you make, you are hereby advised that the proprietors or agents of the separate shows to which an admission price is charged, and who are engaged by these local fair associations or agricultural associations to give their exhibitions on the fair grounds, must each hold the requisite special-tax stamp for the State in which they are engaged in giving these exhibitions.

The special-tax stamp held by an agricultural association for its fair grounds does not cover these separate exhibitions, if the fair association receives only, as you state, "a certain per cent of the receipts," the remainder of the money received belonging to the proprietors or agents of these exhibitions.

Respectfully, ROBT. WILLIAMS, JR., *Acting Commissioner.*
Mr. P. B. HUNT, *Collector Fourth District, Dallas, Tex.*

(253.)

Special tax—Poultry show.

A poultry show or other exhibition given by an association, for admission to which money is collected, not for the pecuniary profit of any member of the association, but merely to cover expenses incurred, is not such a public exhibition or show for money as is contemplated by paragraph 8, section 2, act of June 13, 1898, and special tax is not required to be paid therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 4, 1900.

SIR: Your letter of the 23d ultimo has been received, relating to the payment on your demand of special tax amounting to \$6.67 by the secretary of the United Fancier's Poultry and Pet Stock Association "for holding a show for which an admission is charged."

It is held by this office that an association giving an exhibition to which an admission price is charged not for the pecuniary profit of any members of the association, but merely to cover the expenses incurred,

does not give such a public exhibition or show for money as is contemplated by the eighth paragraph of section 2 of the act of June 13, 1898, and special tax is not required to be paid therefor.

If the United Fancier's Poultry and Pet Stock Association comes within this ruling, it is entitled to return of the special tax which it has paid, and you will furnish the prescribed form for making claim for the refunding of this money.

Shows of the kind herein referred to are not, as you suggest, upon the same footing as county fairs given by agricultural associations, as county fairs are given for the pecuniary profit of the members of the association and the proceeds thereof, after payment of expenses, are divided among the members of the association.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. J. M. KEMBLE, *Collector Fourth District, Burlington, Iowa.*

LIQUOR DEALERS AND RECTIFIERS.

(4.)

Special tax—Physician—Retail liquor dealer.

A physician who prescribes and sells to his patients whisky, brandy, wine, or any other alcoholic liquor that is not compounded into a medicine by the admixture of any drug or medicinal ingredient therewith, is required to pay special tax as a retail liquor dealer, even though the alcoholic liquor thus furnished be prescribed as a medicine only and so used.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 3, 1900.

SIR: Your letter of the 27th ultimo has been received, concerning Dr. W. M. Sivey, a druggist and physician at Tunnelton, W. Va., who "keeps a small drug store in order to furnish medicines for his patients," and "sometimes prescribes stimulants for fever patients and in various diseases, and furnishes it only upon his prescription as a physician."

You may inform Dr. Sivey that he can not prescribe whisky, brandy, wine, or any other alcoholic liquor, and furnish it to his patients under conditions constituting sale of it, even though it is for medicinal use only, without subjecting himself to special tax as a retail liquor dealer under the internal-revenue laws of the United States.

A physician who compounds his own medicines is entitled to the same exemption from special tax as an apothecary under the provisions of section 3246, Revised Statutes—that is, he may keep spirits, wine, etc., on hand and use them in combination with drugs or medicinal ingredients in the preparation or making up of his medicines, and may sell such medicines, without paying special tax as a liquor dealer. The exemption does not extend to the sale of alcoholic liquor not thus compounded into medicines by any doctor or druggist.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. A. B. WHITE, *Collector Internal Revenue, Parkersburg, W. Va.*

(8.)

Special tax—Social clubs.

Every social club that receives orders from its members for alcoholic liquor in any quantity less than 5 gallons, and furnishes the liquor so ordered and collects pay therefor, "or accepts the consumer's promise to pay in the future," sells the liquor to its members and is a retail liquor dealer under the internal-revenue laws, and is required to pay special tax accordingly.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

To collectors of internal revenue and others:

The appended opinion of the United States district court of the eastern judicial district of Pennsylvania, in the case of the United States *v.* The Alexis Club, is published for the information of internal-revenue officers and others interested.

G. W. WILSON, *Commissioner.*

UNITED STATES *v.* THE ALEXIS CLUB—UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA—NOVEMBER SESSIONS, 1898—No. 2.

Motion by defendant for judgment upon special verdict.

MCPHERSON, J.:

The facts upon which the question for decision arises appear in the following special verdict:

"The jury find in the above-entitled cause the following facts:

"That the defendant is a bona fide organization organized in the year 1871, and incorporated under the laws of the State of Pennsylvania, on the tenth day of December, 1881.

"That prior to July 1, 1897, and for some time after July 1, 1898, the said defendant had its clubhouse and headquarters at the northeast corner of Seventh and Vine streets, in the city of Philadelphia, and in the first collection district of the State of Pennsylvania.

"That the said defendant had, during the period last mentioned, a bar on the third floor of the said clubhouse and kept a stock of malt and spirituous liquors for the consumption of the members of the said club only, and sold and furnished to them in quantities not exceeding five gallons—that is to say, simply by the glass or single drink. That the said liquors were purchased by a committee of the said club, known as the refreshment committee, which made a weekly report to the general weekly meeting of the members of the club of all the purchases made on behalf of the said club. That after a resolution had been passed at such meeting of members for the payment of all purchases made, orders were signed by the president of the club, attested by the secretary, and the treasurer made payment out of the club's funds.

"That the members of the club purchased with money from the steward checks which were used in payment for all refreshments bought, said checks only being sold to and used by members of the club. The furnishing of all liquors was a mere incident to the use and enjoyment of the club. That, as a matter of fact, checks were not purchased in equal amounts by members of the club, it being optional with each

member to purchase none, or to purchase any quantity he might desire, and the money derived from the sale of such checks went into the treasury of the club.

"That the said club owned the property in fee simple at the northeast corner of Seventh and Vine streets, having owned the same since June, 1884, which cost the defendant, together with the library, over \$20,000. Literary and musical entertainments for members, their families, and friends, were given from time to time, and among modes of recreation the club maintained a bowling alley, pool and billiards, chess and checkers.

"That the membership of said club was limited, and among the requisites for membership the applicant was required to be a citizen of the United States.

"That the collector of internal revenue for the first collection district aforesaid returned the said defendant organization as a retail liquor dealer, and assessed a tax of \$25 as such a retail liquor dealer from July 1, 1897, to June 30, 1898. That said tax was not paid, and that in accordance with law a penalty of 50 per cent was added, making a total indebtedness of \$37.50 for the period last mentioned.

"That the said collector, on the last day of July, 1898, again returned the said defendant organization as a retail liquor dealer, and assessed a tax of \$25 as such retail liquor dealer from July 1, 1898, to June 30, 1899, which latter sum not having been paid, the penalty of 50 per cent was again added, making a further indebtedness of \$37.50, and a total indebtedness of \$75 for taxes and penalties claimed to be due the plaintiff by the defendant as such retail liquor dealer as aforesaid from July 1, 1897, to June 30, 1899.

"Upon the foregoing facts, the jury find a special verdict in favor of the United States and against the defendant in the sum of seventy-five dollars (\$75), if the court should be of the opinion that the law is with the plaintiff; otherwise they find for the defendant."

The question for decision is this: Upon the foregoing facts, is the defendant a retail dealer in liquors within the meaning of section 3244 of the Revised Statutes? That section provides in its fourth clause that such dealers shall pay a special tax of \$25; and then goes on to give the following definition of a retail dealer: "Every person who sells or offers for sale foreign or domestic distilled spirits or wines, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors." That the defendant is a "person," is not now denied, and the question, therefore may be stated thus: Is the transaction described by the special verdict, such a "sale" of liquor by the club to its members as the section intends? If so, the defendant falls within the statutory definition, and he must pay the tax. If not, no tax is imposed by the section.

Whether a club organized in good faith for the purpose of social enjoyment sells drinks to its members when they order and receive this kind of refreshment, and pay for it, or whether the club is then engaged in distributing its stock of liquors among consuming members, has been much discussed and variously decided. The question has usually arisen upon the construction of a law licensing the sale of intoxicating drinks, and the decisions that declare the transaction not to be a sale have naturally and properly been much influenced by the language of a particular law, and also by the fact that such a statute is generally, perhaps always, a penal statute, which punishes a violation of its provisions by fine and imprisonment, and is, therefore, to be construed strictly in favor of the

accused. Where such a statute speaks of a "dealer," or of "dramshop keeper," or of selling by "retail," or the "business of selling," without defining these terms, the task of definition falls upon the trial court, and there may be a little difficulty in concluding that a social club does not "deal" in liquors, or is not engaged in the "business" of selling, within the common meaning of these words. Nearly all the cases that were decided before 1892 are collected and reviewed in an excellent article by Judge Endlich in volume 12 of the *Criminal Law Magazine*, at page 541.

But section 3244 of the Revised Statutes differs in an important particular from the statutes that were construed in these cases, and in some others that are cited upon the defendant's brief. This section declares expressly what is meant by a retail "dealer," and necessarily implies what is meant by a "sale." Every person is a retail dealer "who sells or offers for sale foreign and domestic distilled spirits or wines in less quantities than five wine gallons at the same time." Nothing is said about selling as a business, or selling as an innkeeper; nor is there any other limitation of the words "sells or offers for sale" than the single limitation concerning the quantity to be sold at one time. In the face of language so clear, there is no room for construction. In my opinion, the plain meaning is that a single sale of spirits or wines by any person, in a smaller quantity than five wine gallons, constitutes the seller as a retail dealer in liquors and makes him liable to pay to the United States a special tax of \$25.

Did the defendant, then, sell liquors to its members? I shall not review the irreconcilable cases upon this subject, nor make the superfluous attempt to produce a new argument in support of my conclusion. I content myself with saying briefly that I agree with the general opinion of the community, and hold the transaction to be a simple, ordinary sale. If a chartered club, such as the defendant, buys liquor, the legal title to this property is in the corporation, and not in the members. If the club, having a stock of liquors on hand, should resolve to go out of business, it would scarcely be denied that the liquor could be sold only by the corporation, and not by one or more of the members. The legal title, then, being in the corporation, it is further to be observed that when the title passes to a consumer it passes by a transaction that exhibits every element of a sale, and shows no outward sign of being anything else. The intending consumer asks to be served with a definite quantity of intoxicating drinks; the owner of the legal title to the liquor, acting by a paid servant, agrees to the request, requires the price to be paid in cash or accepts the consumers' promise to pay in the future, and thereupon delivers the subject of the bargain. Nothing else takes place; and if this is not a sale, but is really a partial distribution of the common stock, the truth is so veiled that the participants in the transaction, I venture to assert, rarely suspect that they are taking part in anything but a commonplace sale. It is safe to say that, except perhaps among those lawyers that may be familiar with the discussion upon the subject, to order and receive liquor at the club is always regarded as a sale; and I see no sufficient reason for declining to accept the popular estimate of an act so generally known and so easily comprehended.

There are decisions in several States supporting a similar conclusion concerning the effect of State legislation, but it is perhaps of more value in this court to observe, that the question has been several times before the federal tribunals, and that the position now taken by the Govern-

ment has been uniformly upheld: *United States v. Wittig* (Fed. Cas., 16, 748); *United States v. Woods* (Fed. Cas., 16, 759); *United States v. Rolliger* (Fed. Cas., 16, 190 *a*); *United States v. Kallstrom* (32 Int. Rev. Rec., 152); *United States v. Giller* (54 Fed., 656).

Perhaps the dictum of Judge Simonton in *United States v. Rennecke*, (28 Fed., 847)—that the section under consideration permits a casual sale to a friend as a matter of personal accommodation—may be sound; but even if this be conceded, the dictum does not apply to the facts now before the court. This is a revenue law of the United States, coming up for construction in a federal court; and in such an inquiry the decisions of other federal judges upon the same statute are naturally entitled to weight.

At the argument of this motion, the defendant's counsel stated that the Government's demand was resisted because of the fear that if the tax in suit were decided to be lawful the State of Pennsylvania might also demand that a license be taken out under the laws of the State. It is hardly necessary to say in reply to this apprehension that my decision does not attempt to construe the license laws of the State; and, moreover, that the supreme court of Pennsylvania has distinctly ruled that such laws do not require a license to be taken out by a bona fide social club. (*Klein v. Livingston*, 177 Pa., 224.) Until the legislature sees fit to change the law in this respect, the defendant is in no peril from the State. Neither (to reply to another suggestion of counsel) is a mere dining club, an association of persons to meet at intervals and pay a certain sum for food and drink, liable to pay this special tax, as long as the club itself does not sell the liquor consumed. The meeting of such clubs are often held at a hotel, and the members separately, or a committee as agent for the others, buy the liquor from the landlord, and direct it to be delivered to the consumers. Obviously this is not a sale by the club or by its members, but a purchase, and bears no resemblance to the state of affairs found by the special verdict.

I may perhaps be permitted to add a single word in conclusion. If the result that I have reached is correct, I believe it to be in the line of enforcing equality before the law; and equality before the law is a principal of American society, than which there is none more vital. Privilege and a privileged class are, and ought to be, intolerable; and it comes irritatingly near to a privilege, when social clubs, offering advantages of comfort and luxury that are only within the reach of the more prosperous, escape a share of the public burdens, because a refined reasoning declares that they are doing no more than distributing a common stock of liquor among their members, while the robust sense of the community, not excluding the club members themselves, knows the transaction to be a sale.

Judgment will be entered for the United States upon the special verdict.

(Exception to the defendant.)

(19.)

Special tax—Sales of malt extracts.

Every malt extract composed of malt liquor, combined with drugs, may be sold by a druggist by the bottle under labels specifying the diseases for which it is held out as a remedy, without involving him in liability as a retail malt-liquor dealer, if he sells it in good faith for medicinal use only.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 22, 1900.

SIR: In reply to your letter of inquiry of the 9th instant, you are hereby informed that the ruling regarding malt extracts to which you refer is that every malt extract that is composed of fermented malt liquor combined with drugs (such as Anheuser-Busch Malt Nutrine, Hoff's Malt Extract, Pabst's Malt Extract, and Wyeth's Malt Extract, which have been shown by evidence under oath filed here to have been so compounded into medicine) may be sold by a druggist by the bottle, under labels specifying the diseases for which it is held out as a remedy, without involving the seller in special-tax liability as a retail malt-liquor dealer, provided he sells it in good faith for medicinal use only.

Every druggist or other person who sells any malt extract as a beverage, or sells it knowingly to those who buy it for use as a beverage, without holding the requisite special-tax stamp as a malt-liquor dealer to cover such sales, is not only liable to assessment of the special tax and 50 per cent penalty, but also to criminal prosecution.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. N. J. GILLESPIE, *Savannah, Ga.*

(20.)

Special tax—Grape cider.

(On ciders see also Decisions Nos. 27; 48; 55; 88.)

The sale of a beverage called "grape cider," which appears to be a sweetened wine, requires payment of special tax as liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 23, 1900.

SIR: The sample of a beverage called "grape cider," referred to in your letter of the 8th instant, obtained by Revenue Agent Brackett, at the grocery store of ———, and which Mr. Brackett says had been "manufactured and sold to them by ———, Middlebass Island, Ohio," has been analyzed by the chemist here, who, in his report dated the 19th instant, states the result of his analysis of this sample as follows:

Alcohol, per cent by volume, 8.65; alcohol, per cent by weight, 6.95; total solid matter, per cent by weight, 15.35.

He further says: "The sample appears to be a sweetened wine."

All persons, therefore, engaged in the sale of this beverage are required to pay special tax as liquor dealers.

Respectfully,
 Mr. C. H. INGRAM, *Revenue Agent, Nashville, Tenn.*

G. W. WILSON, *Commissioner.*

(27.)

Special tax—Cider.

A beverage made of the juice of apples, even though by fermentation it develops "an alcoholic strength of 7 or 8 per cent," or more, does not on this account become a liquor for the sale of which the internal-revenue laws require special tax to be paid.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
 Washington, D. C., January 29, 1900.

SIR: Your letter of the 20th instant has been received, relating to the question of the special-tax liability, under the internal-revenue laws, of persons who deal in your ciders, all of which you state, though sold under the names blackberry, grape, orange, cherry, and raspberry cider, according to the flavoring that you use, are made strictly in accordance with the following formula: .

	Ounces.
29 gallons pure apple juice.....	3,712
Sirup (granulated sugar and water).....	369
Extract, containing flavor according to formula:	
	Ounces.
Distilled water	11.25
Cologne spirits.....	3.75
	15
Total ounces in 32 gallons.....	4,096

It is held by this office that a beverage thus made does not come under the head either of distilled spirits or wine or malt liquor or any compound thereof; and as these are the only liquors for the manufacture and sale of which special tax is required to be paid under the internal-revenue laws of the United States, you are not required to pay special tax as a rectifier and liquor dealer for making for sale and selling this beverage; nor are any other dealers therein required to pay special tax as liquor dealers under these laws on account of its sale, if they sell it without the addition thereto of any spirits or wine or other alcoholic liquor.

You say that local officers in the States of Arkansas and Texas "seem to hold that if cider develops an alcoholic strength of 7 or 8 per cent, it is a compound liquor, even though it be the pure apple juice, not taking into consideration the fact that such alcoholic strength is the result of fermentation." If they take any such view of the law they are in error. A beverage made out of the juice of apples, even though by fermentation it develops "an alcoholic strength of 7 or 8 per cent," or more, does not on this account become a liquor for the sale of which the internal-revenue laws require special tax to be paid.

A copy of this letter will be sent to the collectors of internal revenue in Texas and Arkansas.

Respectfully,
G. W. WILSON, *Commissioner*.
Mr. GEORGE MILTENBERGER, *St. Louis, Mo.*

(33.)

Special tax—Crème de menthe.

A beverage called crème de menthe being a compound of distilled spirits with other materials, every person manufacturing it for sale and selling it becomes liable as a rectifier.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 3, 1900.

SIR: In reply to a letter of inquiry addressed to this office on the 29th ultimo by Frederick D. Howe, treasurer and manager of the Warren Specialty Company, Auburn, N. Y., will you please inform him that the beverage (liqueur) called crème de menthe being, as it is understood, a compound of distilled spirits with other materials, any person manufacturing it for sale must be required to pay special tax as a rectifier under the third paragraph of section 3244, Revised Statutes, and special tax as a liquor dealer for selling it.

Respectfully,
G. W. WILSON, *Commissioner*.
Mr. CHAS. C. COLE, *Collector Twenty-first District, Syracuse, N. Y.*

(35.)

Special tax—Warehouse certificates for whisky in bond.

A brewer, taking warehouse certificates for whisky in bond as security for or in payment of a debt, and selling these certificates in the manner provided in the exempting provision of section 4, act of March 1, 1879, and not being otherwise a liquor dealer, is not required to pay special tax as a wholesale liquor dealer on account of such sale.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 7, 1900.

SIR: Your letter of the 3d instant has been received, submitting the question raised by Messrs. Koehler & Reiss whether their clients, a brewing company, are liable as wholesale liquor dealers on account of their sale of warehouse certificates for whisky in bond, which had been pledged to the brewing company and "taken in satisfaction of a debt."

If the brewing company have sold these warehouse receipts in the manner provided by the exempting provision of section 4 of the act of March 1, 1879, this office, as at present advised, would not regard them as having involved themselves in special-tax liability as wholesale liquor dealers.

The statutory exemption, as you point out, is given to "a person who

is not otherwise a dealer in liquors;" and as, under the internal-revenue laws, a distinction is made between a dealer in malt liquor and a dealer in liquors, it may be held that a brewing company engaged in selling beer only is not "a dealer in liquors," and, therefore, entitled to the benefit of the exempting provision.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

(38.)

Special tax—Imitation fruit juices.

Imitation "fruit juices" made of acids and sweetening, and flavored to resemble fruit juice, do not come under the internal-revenue laws, if they do not contain any noticeable percentage of alcohol. If, however, they are found to contain a perceptible quantity of alcohol, whether this is present through fermentation or the addition of spirits or other alcoholic liquor (wine), dealers therein involve themselves in special-tax liability as liquor dealers under the internal-revenue laws.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., February 8, 1900.

SIR: The eight samples of so-called "fruit juices," to which you refer in your letter of the 9th ultimo as having been "produced by the Ohio Wine and Fruit Company, Cincinnati, Ohio," have been examined by the chemist here, who finds that they do not contain in their present condition any percentage of alcohol sufficient to bring them within the notice of the internal-revenue law; but he says:

These beverages are all made up with acid and sweetening, and flavored to resemble fruit juice. Fermentation has been prevented by the addition of salicylic acid, a chemical preservative. It should be remembered, however, that they may ferment, under favorable conditions, after they have gone into the hands of retailers, and would then be very likely to be taken by revenue officers for wine, especially as most of the names are suggestive of wines.

You should so inform the Ohio Wine and Fruit Company and advise them to warn their trade. For if these so-called fruit juices (which are not fruit juices at all, but, as the chemist finds, are "all made up with acid and sweetening," and are made to resemble fruit juices by the addition of some flavoring extract, and are sold under the false and misleading names: Orange, Concord, Raspberry, Peach, Blackberry, Cherry, and Catawba) should at any time be found by the revenue agents or the local officers to be different from the samples submitted and to contain any quantity of alcohol, bringing them within the notice of the internal-revenue law (even but 1 per cent), and whether this percentage of alcohol is present by reason of fermentation or by the addition of spirits or alcoholic liquor of any kind, all such dealers will be reported for assessment of special tax and penalty as liquor dealers, and to the United States district attorney for prosecution.

No ruling of this office upon analysis of any so-called fruit juice or

"cider" is to be taken as an advertisement or as an assurance to persons dealing therein that they will not thereby be involved in liability under the internal-revenue laws. It is for the manufacturers of these imitation "juices" and "ciders" to give assurance to their trade themselves that they are not alcoholic liquors or compounds.

The use of the names Orange, Concord, Raspberry, Peach, Blackberry, Cherry, and Catawba for beverages which are not made from the juices of these fruits is not to be encouraged; and while there is no provision of the internal-revenue laws under which the use of these false names can be suppressed, yet they must not be considered as countenanced by any ruling that special tax under these laws is not required to be paid for their sale.

Respectfully,
Mr. B. BETTMANN, *Collector First District, Cincinnati, Ohio.*

G. W. WILSON, *Commissioner.*

(42.)

Special tax—Alcoholic extracts and essences.

The special tax of a rectifier is not required to be paid for the manufacture for sale, nor the special tax of a liquor dealer for selling, extracts and essences, such as peppermint, wintergreen, and Jamaica ginger, even though they contain a large percentage of alcohol, if they are the ordinary extracts or essences known to the legitimate grocery or drug trade as household articles for use in culinary and other preparations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1900.

SIR: Your letter of the 3d instant has been received, reporting Phelps, Brace & Co., wholesale grocers and extract manufacturers, 22-28 Cass street, Detroit, Mich., as having involved themselves in special-tax liability as rectifiers and retail liquor dealers on account of their having been "manufacturing and selling to the liquor trade extracts and essences containing a large amount of alcohol," namely, "peppermint, wintergreen, and Jamaica ginger essences."

It is held by this office that these essences, if they are such as are known to the legitimate grocery or drug trade as household articles for use in culinary and other preparations, though they show so large a percentage of alcohol, are not "spurious, imitation, or compound liquors" in contemplation of the third subdivision of section 3244, Revised Statutes; and that, therefore, the special tax of a rectifier is not required to be paid under the internal-revenue laws for their manufacture for sale, nor the special tax of a liquor dealer for their sale, notwithstanding the fact that they are not only sold by the manufacturers to druggists and grocers and other merchants, but are also sold to some liquor dealers, the latter using them as sprinkling or flavoring in alcoholic drinks.

Respectfully,
Mr. JOHN W. SINSEL, *Revenue Agent, Cincinnati, Ohio.*

G. W. WILSON, *Commissioner.*

(43.)

Special tax—Wood alcohol.

The special tax of a liquor dealer under the internal-revenue laws of the United States is not required to be paid for the sale of wood alcohol unmixed with any other alcoholic liquor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 16, 1900.

SIR: In reply to your letter of the 9th instant, you are hereby informed that a person who sells wood alcohol by retail is not required to pay special tax therefor as a retail liquor dealer under the internal-revenue laws of the United States, if this wood alcohol is the product solely of the destructive distillation of wood and is entirely free from admixture with the distilled spirits (ethyl alcohol) defined by section 3248, Revised Statutes, or with other alcoholic liquor.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. I. R. SHAVER, *Twin Lakes, Colo.*

(44.)

Special tax—Rectifier and retail liquor dealer—Form 52.

A person who holds special-tax stamps as a rectifier and retail liquor dealer is not required to pay special tax as a wholesale liquor dealer for transferring packages of spirits from his possession as a rectifier into his possession as a retail liquor dealer; but every such transfer must be entered in his record, Form 52, in strict compliance with section 3318, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 16, 1900.

SIR: Your letter of the 9th instant has been received, relating to the firm of B. W. Hooper & Bro., of Nashville, rectifiers and retail liquor dealers, wherein you inquire "if Hooper as a rectifier disposes of spirits * * * to Hooper as retail liquor dealer, would he be either actually or technically liable for tax as a wholesale liquor dealer?"

He would not. But in every instance in which he sends a package of spirits out of his possession as rectifier into his possession as retail liquor dealer he must make entry thereof in his record, Form 52, in strict compliance with the requirements of section 3318, Revised Statutes.

You will please so inform him and other rectifiers and retail liquor dealers in your district; and if hereafter there be any neglect on their part to make such entries, you will report the facts to the United States district attorney for prosecution under that section.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. D. A. NUNN, *Collector Fifth District, Nashville, Tenn.*

(45.)

Special-tax stamp of corporation after dissolution.

A special-tax stamp held by a corporation as a liquor dealer can not cover the same business carried on by any other person upon the ground that he had been a stockholder in the corporation at the time of its dissolution.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 17, 1900.

SIR: Your letter of 9th instant has been received, inquiring whether or not a person who held stock in a corporation which had paid special tax as a retail liquor dealer is entitled upon the dissolution of the corporation to "continue business in his own name under the stamp issued to the corporation."

He is not. A corporation is a person in law whose existence does not depend upon the particular persons holding stock therein, and it remains the same person in contemplation of law even when all the persons holding stock therein have sold out their interest. Upon its dissolution, therefore, no person can have the right to conduct the same business under its special-tax stamp upon the ground that he had been a stockholder in the corporation.

This is an entirely different case from that of a firm. In the case of the dissolution of a firm, one of its members succeeding to the business is entitled to continue it under the firm's special-tax stamp, if he takes no other person into partnership with him.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. JACOB E. HOUTZ, *Collector Internal Revenue, Omaha, Nebr.*

(46.)

Special tax—Alcoholic medicinal bitters.

A person who manufactures a medicine by mixing with alcohol roots and herbs, and sells such compound (bitters) under a label and stamp as a proprietary medicine, is not required to pay a special tax therefor as a rectifier.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 19, 1900.

SIR: Your letter of the 14th instant has been received, submitting the question of the special-tax liability as a rectifier of a manufacturer of bitters upon the following facts:

A manufacturer of alcoholic bitters buys alcohol and mixes with it a solution prepared by him from roots and herbs, after having reduced the strength of the alcohol by the addition of water. He produces a bitters which is bottled, labeled, and stamped as a proprietary medicinal article, and sold as such.

The manufacturer is not required to pay special tax as a rectifier by reason of thus compounding for sale these alcoholic medicinal bitters.

In mixing up such a medicine he is to be regarded as an apothecary in contemplation of the provisions of section 3246, Revised Statutes, and is entitled to exemption from special tax under that section.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. FRANK McCORD, *Collector Eighteenth District, Cleveland, Ohio.*

(48.)

Fancy ciders.

(On ciders, see also Decision No. 20.)

Production of spurious, imitation, or compound liquors containing distilled spirits to be sold as cider or bounce held to be rectification.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 20, 1900.

SIR: This office is in receipt of a report from Revenue Agent C. H. Ingram, dated the 9th instant, detailing results of a visit on the 23d ultimo, by Revenue Agent Brackett to the establishment of the Southern Vinegar and Cider Works, 810 North Front street, Nashville, Tenn.

It appears that these parties now are, and for some time past have been, manufacturing a compound liquor or beverage and placing it upon the market as cider or "bounce." It appears that the price, ranging from 20 cents to 60 cents per gallon, is regulated according to the quantity of wine and spirits used in the manufacture of the article. In the manufacture of bounce, the manager states that they use in a package of 28 gallons from 6 to 8 gallons of Catawba or grape wine and from one-half to 1 gallon of spirits, the balance being made up of vinegar or water and acetic acid, coloring, sirup, and flavoring. It appears that none of the product is kept in stock, but is put up and compounded upon receipt of orders and at once shipped. The parties purchase their wine by the barrel and their spirits or alcohol in quantities of less than 5 gallons.

It appears further that in November last you required this concern to pay special tax as rectifiers and wholesale dealers, and the revenue agents submits certain questions in the premises, to which this office makes the following reply:

The action of the collector in requiring these parties to qualify as rectifiers and wholesale liquor dealers on account of the production and sale of the articles described above has the approval of this office.

If the wine used has been fortified under the provisions of the act of 1890, it should be reported on Form 122 when dumped for use, and the distilled spirits used in connection therewith should also be reported on Form 122. In such case the product should be placed in legal packages and stamped out on Form 237. If the wine used is simply native wine of ordinary strength, it need not be reported on Form 122, and if the

quantity of spirits used at any one time is less than 5 wine gallons the spirits need not be reported on that form. In such event, the product need not be stamped with a rectifier's stamp nor reported on Form 237.

In reply to the question as to whether this compound liquor comes within the provisions of section 3328, you are advised that it does not fall within these provisions unless the wine used is produced from grapes grown without the United States.

The records of this office do not show that the parties named have qualified as rectifiers. The Form 27b should be sent in at once.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. DAVID A. NUNN, *Collector Fifth District, Nashville, Tenn.*

(55.)

Adulterated ciders.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1900.

To internal revenue collectors and agents:

It has come to the knowledge of this office that manufacturers of so-called ciders are placing upon the market a compound or adulteration under the name of cider, containing wine or spirits in such quantities as to render the manufacturer liable to special tax as rectifier. These compounds or adulterations are composed of sugar, tartaric acid, or vinegar, wine, sulphate of lime, water, etc., and cherry, orange, peach, or other fruit extracts, to flavor the mixture or adulteration so as to produce the various kinds of so-called cider, for example, grape cider, orange cider, peach cider, etc., as desired. One of the results of this practice on the part of these manufacturers is to mislead persons who deal in said compounds, and incur liability to special tax with respect to the same. In most instances the persons who deal in these adulterations claim that they purchased the goods believing them to be what they were represented to be, and that in the sale of the same they were not conscious that they were violating the law, or that they had incurred liability to special tax as liquor dealers with respect to the sale of the same.

In view of these facts, you are instructed to see that manufacturers of this class of adulterations qualify as rectifiers, and place their product in merchantable packages, marked, stamped, and branded as rectified spirits.

The use of wines fortified under the provisions of the act of March 1, 1890, in this connection or otherwise than for consumption as fortified, and as contemplated by law, is prohibited.

While the regulations of this office relating to rectifiers apply to the manufacture of the adulterations described to the extent of rendering the manufacturers of, as well as dealers in, the same liable to special

taxes, they do not apply to pure cider nor to the unfermented juice of the grape, peach, pear, or other fruits.

Any regulations inconsistent with the above heretofore issued by this office are hereby revoked.

G. W. WILSON, *Commissioner*.

(88.)

Adulterated ciders.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 5, 1900.

To internal-revenue collectors and agents:

That part of circular letter of March 1, 1900 (TREASURY DECISIONS, ruling No. 55), which requires that manufacturers of so-called "ciders" composed of distilled spirits or wine mixed with other materials shall "qualify as rectifiers and place their product in merchantable packages, marked, stamped, and branded as rectified spirits," is not to be understood as authorizing the detention of any of these compounds that were put upon the market unstamped prior to the issuance of that circular; nor as prohibiting any person holding the requisite special-tax stamp as a liquor dealer from receiving such unstamped compounds and selling them at the place of business for which his special-tax stamp is issued.

G. W. WILSON, *Commissioner*.

(57.)

Special tax—Blackberry cordial.

The special tax of a rectifier and liquor dealer is not required to be paid for the manufacture and sale of blackberry cordial composed of blackberry juice and water with the addition of cloves, cinnamon, sugar, and a sufficient quantity of alcohol to prevent fermentation, if this cordial is sold only under a label holding it out as a remedy for disease and is sold in good faith for medicinal use only.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 3, 1900.

SIR: In reply to an inquiry made by the Paris Candy and Bottling Company, of Paris, Tex., which you submitted to this office on the 23d ultimo, you may inform them that they are not required to pay special tax as rectifiers and liquor dealers for manufacturing for sale and selling under a label holding it out as a remedy for diseases specified therein, a blackberry cordial composed of the juice of blackberries, with the addition of water, cloves, cinnamon, sugar, and a sufficient quantity of alcohol to prevent its fermentation or spoiling.

Where the cordial is composed, as stated, of 20 gallons of blackberry

juice and 15 gallons of water, with the addition of the other ingredients herein mentioned, the further addition of 2 gallons of alcohol to the 35 gallons of blackberry juice and water would not necessitate the payment of special tax for the manufacture or sale of this cordial when it is sold only under the label hereinbefore mentioned for medicinal use, and is never sold as a beverage, nor sold knowingly to those buying it for use as a beverage. Each bottle of this blackberry cordial sold under such a label must bear the requisite stamp as a medicine.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. P. B. HUNT, *Collector Fourth District, Dallas, Tex.*

(58.)

Special tax—Alcoholic flavoring extract—Claret phosphate.

The special tax of a rectifier and liquor dealer is not required to be paid for the manufacture and sale of an extract containing a noticeable quantity of alcohol, if it is not itself a beverage or fit for use as a beverage, but is used only as flavoring for a glass of water. The special tax of a liquor dealer is not required to be paid for the sale of a beverage composed of an ounce or two of claret phosphate mixed with a glass of soda water.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 3, 1900.

SIR: Your letter of the 23d ultimo has been received, inclosing a letter from Alb. de Lorenzi concerning an alcoholic essence or extract which he intends to manufacture and sell for use in flavoring "an acid phosphate beverage."

The essence or extract in question, though it contains a noticeable quantity of alcohol, is, as it is understood, not itself a beverage or fit for use as a beverage. Mr. De Lorenzi says as to its use:

The direction will be 30 drops, or one-half teaspoonful, to a glass of sweetened ice water to produce a delightful nonalcoholic beverage. The essence itself could not be used as a beverage on account of its acidity.

You may, therefore, inform him that the special tax of a rectifier is not required to be paid for the manufacture for sale of this essence or extract, nor the special tax of a liquor dealer for its sale; nor are persons who manufacture a beverage by adding half a teaspoonful of this extract to a glass of sweetened ice water required to pay special tax as liquor dealers for selling it.

To a further question submitted by him as to dispensing "unfermented grape juice at soda fountains," or dispensing a beverage composed of one to two ounces of claret phosphate mixed with a glass of soda water, you may inform him that the special tax of a liquor dealer is not required to be paid for the sale of these beverages.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. P. B. HUNT, *Collector Fourth District, Dallas, Tex.*

(95.)

Rectification—Recovery of alcohol by means of a still.

The recovery of alcohol by the use of a still is rectification, and every person engaged therein is to be regarded as a rectifier and required to pay special tax accordingly (section 3244, Revised Statutes, third subdivision), except an apothecary who thus recovers alcohol that has been used by him in the preparation or making up of his medicines, the alcohol thus recovered to be again used by him for the same purpose, under the exempting provision of section 3246, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 13, 1900.

SIR: Your letter of the 10th instant has been received, submitting the question of the special-tax liability of the Standard Bottling and Extract Company, of 76 Batterymarch street, Boston, as rectifiers on account of their use of 8 copper stills for the recovery of alcohol from ginger.

The recovery of alcohol by the use of a still constitutes rectification under the internal-revenue laws of the United States, and every person who is thus engaged in recovering alcohol is required to pay special tax as a rectifier, except a druggist who uses alcohol in the preparation or making up of his medicines, and who, under the exempting provision of section 3246, Revised Statutes, is permitted to make use of a still for the recovery of such alcohol where this alcohol is to be again used by him in the preparation of his medicines. This exempting provision must be strictly construed; and even a druggist is not exempt from special tax as a rectifier if he recovers alcohol by means of a still and does not use this alcohol for the making up of his medicines.

The Standard Bottling and Extract Company, it is understood, use alcohol in extracting from ginger root its full strength, and thereafter recover this alcohol by means of a still. The extract of ginger which they thus produce, although (as they state) it has a "medicinal property," and "is not and can not be used as a beverage," is simply an extract of ginger; and in producing this extract for sale they can not, in the opinion of this office, be regarded, from any correct point of view, as apothecaries using alcohol in the preparation or making up of a medicine within the true intent and meaning of section 3246, Revised Statutes. You are, therefore, correct in the view which you take that, in recovering the alcohol in question by means of a still, they are rectifiers and must be required to pay special tax accordingly.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(102.)

Special tax—Brewers selling bottled beer.

Brewers are required to pay special tax as malt-liquor dealers for each and every place at which they are engaged in selling bottled beer and take out a separate special-tax stamp for each distinct and separate place at which such sales are made.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 18, 1900.

GENTLEMEN: Your letter of the 11th instant has been received, stating that you are about to establish a cold-storage house in a town 60 miles from your place of business in Belleville and to engage in the sale of bottled beer there, and inquiring whether, as you hold special-tax stamps as both wholesale and retail dealers in malt liquors in Belleville, you are required to pay special tax and take out stamps for that place of storage and sale.

The special-tax stamps taken out for your place of business in Belleville can not cover sales of bottled beer by you at any other place than that. For each and every distinct and separate place of sale, the law requires a separate special-tax stamp to be taken out. When, therefore, you establish an agency for the sale of bottled beer in both wholesale and retail quantities, you must be required to pay special tax and take out the requisite stamps as wholesale and retail dealers in malt liquors at the place where your agent carries on this business for you.

Respectfully,
WESTERN BREWERY COMPANY, Belleville, Ill.

G. W. WILSON, Commissioner.

(114.)

Special-tax stamps for the special-tax year ending June 30, 1901.

[Int. Rev. Circular No. 568.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 1, 1900.

To collectors of internal revenue:

1. Immediately on receipt of this circular collectors will make out and transmit to this office requisitions on Forms 425 and 100 (revised June, 1898) for special-tax stamps for the special-tax year commencing July 1, 1900, and ending June 30, 1901.

2. *In no case* will stamps be issued to a collector in excess of an estimated three months' supply.

3. These stamps will be denominated "Series 1900," and requisitions therefor should have *this denomination* distinctly indorsed thereon.

4. Collectors in ordering special-tax stamps should base their estimates of the quantity they will need upon the number of each kind

issued by them during the *first three months* of the current year, but in no case should less than *one book* of any denomination be ordered.

5. Collectors will insert, in red ink, in the left-hand column of Forms 425 and 100 (revised), on which requisitions are made, directly opposite the number of stamps of each kind ordered, the number of whole books of such stamps, "Series 1899," in their hands on the day requisitions are forwarded to this office.

6. It is expected that all stamps now prescribed for the coming year will be transmitted from this office on or before June 1, 1900.

7. Collectors will not issue special-tax stamps for the special-tax year ending June 30, 1901, until Form 11, properly filled out, and the money for the stamps have been received; and the stamps *must be issued in consecutive order*, the dates upon the stubs so indicating.

8. On June 30, 1900, collectors will return to this office all special-tax stamps of the series of 1899 (I) and all coupons and stubs of such stamps remaining in their hands, reporting them on line 10 of Form 68 for June as "*in transitu*" June 30, 1900. Collectors are informed that this instruction is mandatory; that no excuse for not complying with the same will be accepted, but that in every case where a collector for any reason shall fail to comply herewith he will be required to forward amended Form 68, on which such stamps and coupons returned must be reported as "*in transitu*" June 30, 1900.

9. When special taxes are collected for other than the current year, the collector will issue stamps of "Series 1900," writing across the face thereof, and also across the stubs, in red ink, "issued ———, 1 ———, for the last ——— months of the special-tax year ended June 30, 1 ———," signing the same in his official capacity.

G. W. WILSON, *Commissioner*.

(121.)

Special tax—Rectifier.

A retail liquor dealer who mixes whisky, sugar, and water, and puts the same in jugs and bottles, keeping it in stock in that form, and selling it when called for as other liquors in stock, or who reduces whisky by mixing water and restores the color by the addition of blackberry juice, is a rectifier.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 5, 1900.

To collectors of internal revenue and others concerned:

The appended decision of the United States district court for the middle district of Tennessee, in regard to the liability of retail liquor dealers as rectifiers in certain cases, is published for the information of all concerned.

G. W. WILSON, *Commissioner*.

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE—
APRIL TERM.*H. M. Stark v. D. A. Nunn, Collector.*

After hearing the argument of counsel his honor Judge C. D. Clark charged the jury as follows :

Now, gentlemen of the jury, you have discovered that in the two cases before you, the facts of which are not disputed, the retail liquor dealer was in the habit of mixing whisky, sugar, and water, and putting that in jugs and bottles and keeping it in his stock in that form, and selling it when wanted as he sold other whiskies and wines in his stock, when called for, by measuring out whatever the customer wanted, whether that was a drink or a small or large bottle. And in the other case the whisky was in like manner kept in stock in bottles, the proof of it reduced by mixing water, and the color restored by blackberry juice.

That raises the question whether or not, under the statute, this man became, by this method of doing business, a rectifier within the statutory definition ; not whether he would be a rectifier in the ordinary acceptance of the term, because the statute has undertaken to give its own definition, which may, if Congress chooses to give such a definition, differ from the ordinary understanding of what would be a rectifier. This is done in the recognized power of the legislature to classify for the purpose of subjecting the articles to revenue or taxation, and the question raised is whether this party, suing the Government to recover back the sum paid by him as rectifier, has really conducted his business in such a manner as to subject himself to the tax imposed on rectifiers. The statute is that—

“Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash through continuous closed vessels and pipes, until the manufacture thereof is complete, and every wholesale or retail liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits—”

Now, the statutes thus enumerates classes who are actually engaged in modes of refining or rectifying, and after having classified in this way for the purpose of ascertaining when persons are subject to this tax, the statute passes entirely away from persons actually engaged in any process of distillation or refining by saying “and every person who without rectifying,” going entirely away from those who have been purifying or refining to the statement, “every person who without rectifying, purifying, or refining distilled spirits.”

So there is here clearly the intent to include every person, the act passing to what may be called compounding. Such persons are not rectifying, purifying, or refining, but compounding. “Shall, by mixing such spirits, wine, or other liquor *with any material*,” are the words of the statute ; “*with any material*,” not by mixing wines or liquors of one kind with another, but with “any material,” and thereby “manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine biters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying.”

Now, it has not been asserted that that language, “by mixing the liquors with any material,” has any technical or trade meaning, or that

its meaning is other than is in ordinary use, and taking it in its ordinary use, in the popular sense, it certainly could not be said that if it is mixed with either water or sugar or blackberry juice it is not mixed with any material—"any material." And it strikes me that an interpretation that would undertake to say that certain materials are within the statute and other materials are not within it, when the statute itself uses the term "any material," would nullify the statute.

The chief difficulty arises from the fact that the Commissioner has not, as I think he undoubtedly has or would have the power to do, made a business regulation which gives effect to his interpretation of the law. I do not think there would be any doubt that he could regulate the mode of doing business, and require the retail liquor dealer, if he mixes with either water or sugar, to pay tax as a rectifier, but he has not exercised this power. We might, then, the more easily determine who is subject to this tax as a rectifier; but notwithstanding the fact that he has not done so, my opinion is that the mixing here is within the language of the act in the absence of any special or trade meaning that would restrict the sense in which the words "any material" and other like expressions, are used in the statute. Now, if we begin to determine what sort of materials are meant, if we say that water and sugar and blackberry juice and orange juice and lemon juice are not materials within the sense of the act, the trouble is to find a stopping place and say what will be a material within the meaning of the act; and notwithstanding that the question is close, my impression is that to hold that "any material" with which the whisky is mixed is not within the act is judicial legislation. There is not any question of forfeiture here, but the mode of business which may make a man a rectifier. I think when an effort is made to except out of the terms of the act certain cases upon the ground that the mixing is not important the act will be rendered nugatory in effect.

So, without further comment on the act, I conclude that these persons were subject to the tax and that the plaintiffs are not entitled to recover, and I direct you to so find.

(142.)

Special tax—Retail liquor dealers.

One special-tax stamp taken out by a retail liquor dealer for his building covers his sales of liquor by retail at any number of bars in rooms or on premises belonging to that building.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1900.

SIR: Your letter of the 28th ultimo has been received, inquiring whether additional special tax is required to be paid in the case of a retail liquor dealer who has "a bar upon the first floor of his building, where business is regularly conducted," and "an additional bar in the basement of the same premises, which is used occasionally for the sale of drinks," there being a stairway "from the upper to the lower room, both rooms being upon the same premises and at the same street number."

You further ask whether additional special tax is required to be paid

by the "proprietor of a summer garden, who has a regular bar located in a building on his premises" and "erects a temporary bar in the rear of his regular place of business for the purpose of accommodating his customers who visit the garden, serving all kinds of drinks from this temporary bar, and delivering the same either over the bar or through-out the garden."

In neither of these cases is additional special tax required to be paid by the retail liquor dealer. In each instance, the several bars belong to but one place of business, the entire premises being under his sole control; and the one special-tax stamp taken out by him as a retail liquor dealer for his building is sufficient to cover his sales of liquor by retail in any number of bars in the building or on grounds belonging to the building.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. FRANK MCCORD, *Collector Eighteenth District, Cleveland, Ohio.*

(154.)

Special tax—Retail liquor dealers compounding spirits.

The ruling of July 21, 1897 (Revenue Journal, 1897), modified by the decision of the United States district court in the case of Stark v. Nunn, Collector (TREASURY DECISIONS, internal-revenue ruling No. 121), wherein it is held that a retail liquor dealer who compounds spirits, even in quantities less than 5 gallons, and puts them up in bottles or jugs, and keeps them in stock for sale, must be required to pay special tax as rectifier.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1900.

SIR: In reply to a letter addressed to this office on the 5th instant by Louis Morley & Co. (who have to day been referred to you), you will please inform them that the decision of Commissioner Forman, July 21, 1897, to which they refer, relating to the compounding of spirits by a retail liquor dealer in quantities less than 5 gallons (U. S. Revenue Journal, July 28, 1897), so far as it is inconsistent with the decision of the United States district court, middle district of Tennessee, in the case of Stark v. Nunn, Collector, as published in TREASURY DECISIONS, internal-revenue ruling No. 121, must be regarded as modified by the latter decision, under which it is held that a retail liquor dealer who compounds spirits even in quantities less than 5 gallons, and puts them up in bottles or jugs, and keeps them in stock for sale, must be required to pay special tax as a rectifier.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

(167.)

Special tax—Manufacture of wines.

A person who buys berries or any small fruits (except grapes) and makes wine therefrom, does not come within the exempting provision of section 3246, Revised Statutes, in selling such wines, and is required to pay special tax as a liquor dealer for selling it, even if at the place of manufacture

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 28, 1900.

SIR: In reply to the inquiries addressed to you by the Waco Cider-Extract Company, which you submitted to this office in a letter dated the 18th instant, you will please inform them that a person who buys, as they state, "strawberries, blackberries, peaches, and tomatoes," and manufactures wines therefrom, does not come within the exempting provision of section 3246, Revised Statutes, and is required to pay special tax as a liquor dealer for selling such wines.

The special tax of a rectifier is not required to be paid by such person on account of his manufacture of these wines, unless he mixes therewith other materials, changing them into compound liquors in contemplation of the third paragraph of section 3244, Revised Statutes.

A person who buys grapes and manufactures wine therefrom is entitled to sell this wine at the place of manufacture and at one "general business office" without paying special tax therefor as a liquor dealer; but this exemption does not apply to wine made by him from any other fruits not of his own growing, but purchased by him.

Respectfully, G. W. WILSON, *Commissioner.*
MR. WEBSTER FLANAGAN, *Collector Third District, Austin, Tex.*

(169.)

Special tax—Liquor at summer resorts.

One special-tax stamp taken out by the proprietor of a pleasure resort under his sole control is sufficient to cover his sales of liquor at any number of separate stands or booths within the grounds composing this resort.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 29, 1900.

SIR: Your letter of the 21st instant has been received, concerning the Bergen Beach Company and the Manhattan Beach Company, each of whom has several bars for the retailing of liquors at various points on the grounds controlled by the company, but all belonging to the pleasure resort conducted by the company.

It is held that in each of these cases one special-tax stamp taken out by the company as a retail liquor dealer for its premises comprising the pleasure resort is sufficient for all of these bars. The long-settled

ruling of this office has been that, in the case of a summer pleasure resort under one proprietorship, whose grounds are not cut into two or more parts by intervening property under the control or management of other persons, the entire grounds composing the resort are to be regarded as forming but one place of business so far as the special-tax laws are concerned, and that one special-tax stamp taken out by the proprietor for the retailing of liquors at that place is sufficient to cover these sales made by him in any number of buildings, booths, or stands erected within the boundaries of the resort.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. FRANK R. MOORE, *Collector First District, Brooklyn, N. Y.*

(189.)

Special tax—Mai wine.

The addition of the herb woodroof, or its essence, to Rhein wine, for sale under the name of Mai wine, does not change the wine into a spurious, imitation, or compound liquor, and the special tax of a rectifier is not to be paid therefor.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., July 28, 1900.

SIR: in a letter addressed to this office by your chief deputy, Mr. Lasche, referring to a canvass that is being made by revenue agents to discover and report as rectifiers wholesale liquor dealers who have manufactured Mai wine, he states the facts as follows:

Wholesale liquor dealers, during the month of May each year, sell to their customers a wine called Mai wine. This wine is a Rhein wine, and does not differ from any other genuine grape wine, and is put upon the market here the same as it is received from California or Germany, with the exception that the wholesale liquor dealer puts into the cask, before bottling the wine, a certain plant called Asperule-Woodroof, and in German Waldmeister. This plant grows during the month of May only, and in consequence thereof the wine is called Mai wine. The plant has a very strong aroma, and is introduced into the Rhein wine only for the purpose of giving the wine, which is more or less sour, a sweeter taste, and it can not be introduced into any other wines without destroying the same for the market. In some instances * * * essence is produced from the plant, and a certain quantity of the same introduced instead of the original plant, and every purchaser fully understands that Mai wine is a Rhein wine with the addition of the plant referred to.

In the opinion of this office, the addition of this herb or its essence to wine does not have the effect of changing the wine into a spurious, imitation, or compound liquor in contemplation of the third paragraph of section 3244, Revised Statutes, and therefore the special tax of a rectifier is not required to be paid by a wholesale liquor dealer on account of his thus preparing Mai wine for sale.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. HENRY FINK, *Collector First District, Milwaukee, Wis.*

(190.)

Special tax—Hospitals furnishing liquors.

The special tax of a liquor dealer is not required to be paid by a hospital for furnishing alcoholic liquors as medicines to its patients, if it is not conducted for the pecuniary profit of those who are managing and controlling it, but is a public institution, founded and conducted for the general good and not as a business.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 30, 1900.

SIR: Your letter of the 17th instant has been received, recommending assessment of special tax and penalty against St. Joseph's Hospital, Eighteenth and Humboldt streets, Denver, Colo., as a retail liquor dealer on account of "handling liquors and alcohol and furnishing same to patients and charging for it as medicine."

It does not appear that this is a private institution conducted, like the Keeley institutes or private sanitariums, for the pecuniary profit of those who are managing and controlling it. If, as the fact is understood to be, it is not so managed or controlled, but is a public institution founded and conducted for the general good and not as a business for profit, and the money derived from its patients for alcoholic liquors furnished them as medicines is devoted to the maintenance of the institution and the payment of its expenses, in the opinion of this office it can not be regarded, on this account, as in the business of a liquor dealer within the meaning and intent of the internal-revenue laws, and special tax is not required to be paid therefor.

Respectfully,
Mr. GEO. H. WHEELOCK, *Revenue Agent, Denver, Colo.*

G. W. WILSON, *Commissioner.*

(194.)

Special tax—Reduction of spirits with water.

The addition to spirits of water only does not change the spirits into a spurious, imitation, or compound liquor (section 3244, Rev. Stat., par. 3), and, therefore, the special tax of a rectifier is not required to be paid on this account.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 8, 1900.

SIR: Your letter of the 3d instant has been received, submitting that the decision of the United States circuit court for the middle district of Tennessee, in the case of *Stark v. Nunn*, Collector (TREASURY DECISIONS of May 10, 1900, p. 42), is capable of the construction that either a retail or a wholesale liquor dealer involves himself in special-tax liability as a rectifier when he simply reduces whisky by the addition of water, for sale, and does not use any other material, and inquiring whether such is the construction given to it by this office.

It is not. The addition to spirits of water only, it is held, does not change the spirits into a spurious, imitation, or compound liquor in contemplation of the third paragraph of section 3244, Revised Statutes, and, therefore, the special tax of a rectifier is not required to be paid on this account.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. F. G. THOMPSON, *Revenue Agent, New York*.

(204.)

Special tax—Liquors taken on chattel mortgage.

Where a person, not otherwise a dealer in liquors, takes a stock of liquors on a chattel mortgage to secure a debt, he is entitled under the exempting provision of the statute to dispose of this entire stock at one sale without paying special tax therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 24, 1900.

SIR: Your letter of the 20th instant has been received, inquiring whether "if a man has a chattel mortgage on a saloon containing liquors in quantities of more than 5 gallons, and of less than 5 gallons, and in settlement of the debt he takes the saloon, or business, under the terms of the chattel mortgage, and desires to dispose of it, he has the right to sell it to one customer without paying special tax as wholesale liquor dealer."

If he is "not otherwise a dealer in liquors," in view of the exempting provision of section 4 of the act of March 1, 1879 (Compilation 1900, page 126), he is not required to pay special tax for selling this entire stock of liquors to one person at one sale.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. G. P. WALDORE, *Collector Tenth District, Toledo, Ohio*.

(210.)

Wholesale liquor dealers' book.

Where persons who are merely retail liquor dealers take out a special-tax stamp as wholesale liquor dealers for the purpose of enabling them to buy spirits at wholesale prices from the distillers, they must keep the book, Form 52, and make entries therein of the packages received and also of the packages set over to themselves as retail liquor dealers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 7, 1900.

SIR: Your letter of the 28th ultimo has been received, concerning persons in your district not making nor intending "to make any sales of spirits or liquors in wholesale quantities," but paying special tax as wholesale liquor dealers "simply to be able to purchase their liquors at wholesale prices from the distillers and other wholesale liquor dealers, which they would be unable to do as retail liquor dealers."

It is, of course, not obligatory upon these persons to take out a special-tax stamp as wholesale liquor dealers, but if they choose to do so, they must keep the book, Form 52, and make entries therein of the packages of spirits received by them and also of the packages of spirits thereafter sent out of their possession as wholesale liquor dealers to themselves as retail liquor dealers.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. P. B. HUNT, *Collector Fourth District, Dallas, Tex.*

(223.)

Special tax—Spirituuous drinks at soda fountains.

Liability to special tax as retail liquor dealers of parties selling drinks at a soda fountain containing distilled spirits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 8, 1900.

SIR: In reply to the letter addressed to you by your deputy at Mankato, Minn., on the 15th ultimo, which you referred to this office, on the 21st ultimo, concerning the case of Mr. F. G. Heinze, who keeps a "restaurant and, in connection therewith, a soda fountain," and who contemplates selling drinks at his soda fountain to which he adds "either brandy, gin, or rum," you will please inform him that if the amount of "pure gin or rum," as he states, or brandy, added to the glass of soda water sold amounts to 2 per cent (as it is understood that he alleges), Mr. Heinze must be required to pay special tax as a retail liquor dealer for selling such a beverage.

But where an alcoholic flavoring sirup is used for sprinkling into a glass of soda water a quantity so small as to merely give a flavor to the water, the special tax of a liquor dealer is not required to be paid for the sale of such a beverage. (Ruling 58, TREASURY DECISIONS OF March 8, 1900, page 31.)

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. F. VON BAUMBACH, *Collector Internal Revenue, St. Paul, Minn.*

(255.)

Special tax—Exempting provision, section 4, act of March 1, 1879.

Where alcoholic liquor shipped in bottles (cases) is taken by a railroad company to secure payment of freight charges the auctioneers of the company may sell the liquor "in one parcel only," under the exempting provision of section 4, act of March 1, 1879—though the quantity sold is less than 20 wine gallons—without involving themselves or the railroad company in special-tax liability.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 7, 1900.

SIR: In reply to a letter addressed to you by Thomas W. Barlow, Esq., counsel for M. Thomas & Sons, auctioneers, Philadelphia, which you

referred to this office on the 30th ultimo, wherein he says that these auctioneers "have to sell nine cases of gin for the Pennsylvania Railroad, which gin has been taken into possession by the railroad for non-payment of freight," will you please inform him that his clients, the auctioneers in question, are entitled to sell this gin for the railroad company "in one parcel only," without involving either themselves or the railroad company in special tax liability as liquor dealers under the construction given by this office to the exempting provision of section 4, act of March 1, 1879 (compilation 1900, page 126), and that if these cases of gin were received by the railroad company from different persons for transportation, the sale of the nine cases separately is to be regarded in each case as a sale in one parcel only, and special tax is not required to be paid therefor. If, however, the entire nine cases were shipped by one person, they must all be disposed of at a single sale, otherwise the exempting provision does not apply.

Respectfully, ROBT. WILLIAMS, JR., *Acting Commissioner*.
Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

OLEOMARGARINE.

(2.)

Special tax—Wholesale dealer in oleomargarine.

Where a person, though not otherwise a dealer in oleomargarine, at the request of another, orders original manufacturer's packages of oleomargarine, and the manufacturer ships the packages to him and charges them to him, and looks to him only for pay therefor, and he receives these packages and delivers them to the person at whose request he sent such orders, collecting of the latter the purchase money, he must be regarded as having bought the oleomargarine on his own account and as having sold it, and, therefore, must be regarded as a wholesale dealer in oleomargarine and required to pay special tax accordingly, even though he show that he acted solely for the accommodation of the person to whom the oleomargarine was delivered by him, and that he derived no profit therefrom.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 29, 1899.

To collectors of internal revenue and others:

The appended decision of the United States district court for the southern district of Illinois is published for the information of all concerned.

G. W. WILSON, *Commissioner*.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF ILLINOIS.

Judd O. Hartzell v. The United States.

ALLEN, W. J., *J.*

Judd O. Hartzell filed his petition November 16, 1895, asking for judgment against the United States for an internal-revenue tax as dealer in oleomargarine, which he alleges was improperly assessed against him. The tax and penalty amounted to \$960.

Petitioner claimed that he had not been a dealer in oleomargarine, and the facts as testified to by the petitioner and by one H. A. Owens, a hotel keeper at La Harpe, Ill., tended to show that Owens had been in the habit of using oleomargarine in wholesale quantities at his hotel, and that the goods, while ordered in Hartzell's name, were for the sole use and benefit of Owens; that Hartzell acted as Owen's agent, and that the purchaser and sellers all so understood the matter.

The proof on behalf of the Government showed that a portion of the goods were purchased by Hartzell from Charles C. Clark, traveling salesman for Reid, Murdock & Co., of Chicago, Ill., and Clark testified that in April, 1893, he visited Hartzell for the purpose of selling him goods; that Hartzell wanted a tub of oleomargarine, and when informed by Clark that his house did not handle oleomargarine, he was requested by Hartzell to ask the house to procure it from some one who did handle it and have it shipped to him. The order went in to Reid, Murdock & Co. in this way on a separate slip of paper, and was by them turned over to Armour & Co., of Chicago, Ill., which latter company shipped the oleomargarine to Hartzell. Clark further testified that he was acquainted with Owens that kept the hotel in La Harpe; that he never sold him any oleomargarine and never took any order from him for such goods; that Hartzell asked him whether any license was required for handling oleomargarine, and Clark told him there was such requirement, but that he was not posted and would be no authority on that subject.

Another portion of the goods involved in the transaction appears to have been purchased by the petitioner from C. H. Pierce, traveling salesman for the Armour Packing Company, of Peoria, Ill.

Pierce testified that he called on the petitioner about every two weeks during the year 1893, and on one or two occasions sold him oleomargarine in 40-pound lots; that he knew Owens, who kept the hotel, and never at any time sold him any oleomargarine.

The inevitable conclusion from the evidence is that the sales of oleomargarine for which this tax and penalty were collected from the petitioner as a wholesale dealer were made to the petitioner, and not to Owens, and that the petitioner in buying bought on his own account, and not as the agent of Owens or any other person.

On a demurrer to the original petition filed in this case, I had occasion to file an opinion as to the questions of law arising on the pleadings December 24, 1897, overruling the demurrer and holding that petitioner had a cause of action against the Government, if the facts could be proven as stated in his petition; but on the trial before me the evidence failed to sustain the substantial averments of the petition and a verdict was rendered for the Government and judgment on the verdict followed.

(105.)

Oleomargarine—Retail dealer selling more than 10 pounds at a time.

Where a retail dealer sells and delivers upon one order two packages of oleomargarine, each containing 10 pounds, of the same grade and at the same price, he sells 20 pounds of oleomargarine in contravention of the law, which distinctly limits him to the sale of "quantities not exceeding ten pounds" (section 6, act of August 2, 1886).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 23, 1900.

SIR: Your letter of the 16th instant has been received, relating to the case of the United States v. George H. Smith, a retail dealer in oleomar-

garine at 2707 Superior street, Chicago, who is charged with selling and delivering at one time more than 10 pounds of oleomargarine of the same grade and at the same price.

You state that Mr. Smith has sworn "that one of the 10-pound lots * * * was of a grade known as Fancy Creamery and the other 10 pounds was Dairy," and that the United States commissioner before whom the case has been brought has "withheld his decision * * * in order to give himself an opportunity to read the decision laid down by the court in the case of the United States v. William V. James (30 Internal Revenue Record, p. 29)."

It is held by this office that if a retail dealer in oleomargarine puts up, sells, and delivers upon one order two packages of oleomargarine, each containing 10 pounds, of the same grade and at the same price, he sells 20 pounds of oleomargarine in contravention of the law, which distinctly limits him to the sale of "quantities not exceeding 10 pounds" (section 6, act of August 2, 1886).

In my opinion, he can not be considered as having made a separate bargain and sale of each of these packages, within the meaning of the decision in the case of the United States v. James, merely upon showing that a different name was given to each of these 10-pound packages when both were of the same quality and sold at the same price upon a single order.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. JAS. W. MCGINNIS, *Revenue Agent, Chicago, Ill.*

(106.)

Special tax—Oleomargarine—Shipments by manufacturers.

Where manufacturers ship stamped packages of oleomargarine on orders of customers and do not take the waybills from the common carrier to these customers nor to their use, but simply to their own agent who receives and delivers the packages to the persons whose names are found thereon, the manufacturers involve themselves in special-tax liability as wholesale dealers at the place where their agent makes these deliveries.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 23, 1900.

SIR: Your letter of the 13th instant has been received, relating to transactions in oleomargarine carried on by grocymen who are "urged into the taking of orders by manufacturers," and who receive and deliver the packages to customers, thereby necessitating payment of special tax either by them or by the manufacturers.

You say that the manufacturers contend that a groceryman "can send in a list of names or orders of his customers for a number of packages of oleomargarine; that the goods can be shipped to the groceryman may be taken into and delivered from the groceryman's store, and the

groceryman be made the agent for collections and remitting all the money, and they really hold him responsible for the goods."

If there is evidence that the groceryman is charged by the manufactures with the price of the stamped packages of oleomargarine shipped to him, and they look to him only for the purchase money, these packages must be regarded as sold to him, and when he delivers to his customers and collects the money due thereon, must be held to have been sold by him to them, and he must be required to pay special tax therefor. If, however, there is no evidence of this kind, but it is shown that, upon upon the orders of his customers, sent in by him to the manufactures, they ship the packages of oleomargarine even with the names of these customers thereon, and do not take the waybills from the common carrier to these customers nor to their use, but to the groceryman who, as they allege, is acting as their agent in these transactions for the receipt and delivery of the packages, then the manufacturers must be held to special-tax liability as wholesale dealers in oleomargarine at the place where their agent, the groceryman, made these deliveries. The ruling No. 21852, of December 15, 1899, *TREASURY DECISIONS*, 1899 (volume 2, page 810), relating to a brewer's shipment and delivery of bottled beer, is applicable to these shipments and deliveries of stamped packages of oleomargarine.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. J. B. McCoy, *Revenue Agent, Milwaukee, Wis.*

(152.)

Special tax—Oleomargarine—Manufacturer's agents.

Where original stamped packages of oleomargarine are set apart at the factory of the manufacturer (or at the place of business of a wholesale dealer under his special-tax stamp) as the property of persons whose orders therefor have been received, they may be consigned to agents of the manufacturer (or wholesale dealer) for delivery and for collection of the purchase money due thereon without special-tax liability on the part of either of these agents or the manufacturer or wholesale dealer, provided that in the bill of lading and in the waybill of the common carrier it is explicitly set forth that these packages of oleomargarine are consigned to the agents for the use of the owners thereof whose names are given therein.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 7, 1900.

GENTLEMEN: I have received and carefully considered your letter of the 11th ultimo, concerning the shipment and delivery of oleomargarine by manufacturers, and submitting the following suggestions as to the course which the Armour Packing Company, of Kansas City, intend to pursue hereafter in order to bring themselves within the latest ruling of this office on this subject, namely:

Agents for the sale of oleomargarine will solicit orders for shipment by manufacturers or wholesale dealers. These orders will be sent in to

the manufacturers or wholesale dealers on special order blanks, which read that the order is subject to acceptance or rejection at the manufacturer's or wholesaler's place of business, and, upon the acceptance of the orders, the oleomargarine is set aside as the property of the buyer and is marked, charged, and billed to said buyer or buyers. As a matter of convenience and to save freight charges, the oleomargarine will be shipped on one bill of lading to the agent under the following shipping instructions:

"Ship me on one bill of lading to _____, agent, for the use of the following owners thereof, delivery to be made free of all liens, claims, and demands, from consignors."

Each bill of lading will contain the following directions and conditions:

"Consignee, _____, agent, for the use of the following owner or owners thereof, delivery to be made free of all liens, claims, and demands, from consignor."

Upon receipt of the oleomargarine by the agent, he will deliver to the various owners and collect as per terms shown on invoice, either on delivery or at any time thereafter as directed by the invoice, which document will be mailed said agent for collection when shipment is made.

Attached to your letter is found a specimen of an instrument issued by the officers of the Baltimore and Ohio Railroad, reading as follows:

Receive and forward, subject to the conditions of the shipping receipt of which this invoice is a part, the articles named below.

WASHINGTON, D. C., _____, 190-.

Marks.	Description of property.	Weight.
Consignee, J. S. Smith, Agent.	30-10 pounds tubs of oleomargarine. For the use of the following owner or owners thereof, delivery to be made free of all liens, claims, and demands from consignors: John Smith, Frank Brown, Henry Jones.	325 lbs.
.....		
Destination.		
Place, ...		
.....		
County, ...		
State, ...		
Route, ...		
.....		
Charges advanced, \$.....		

_____. Car No. _____.

_____, Shipper.

In every instance where original stamped packages of oleomargarine, set apart at a factory or at a place of business where the requisite special-tax stamp is held, are delivered to the common carrier in the manner herein described and are conveyed to their destination upon the terms and conditions here set forth, and the waybill received by the shipper from the common carrier sets forth the same terms and conditions, it is held that the agent of the manufacturer or wholesale dealer who, upon the arrival of these packages of oleomargarine at their destination,

receives them and delivers them to the owners whose names are marked thereon, does not thereby involve either himself or the manufacturer or wholesale dealer (his principals) in special-tax liability at that point of delivery; and that the collection of the purchase money due thereon, either then "or at any time thereafter as directed by the invoice * * * mailed said agent for collection when shipment is made," does not give rise to any question of such liability. * * *

Respectfully, G. W. WILSON, *Commissioner*.
Messrs. DUDLEY & MICHENER, *Washington, D. C.*

(160.)

Special tax—Oleomargarine manufacturers.

A bill of sale of an original stamped package of oleomargarine, containing a description of the package and the name of the purchaser, and executed at the factory by the manufacturers, and sent from there to the purchaser, completes the sale and constructive delivery of the oleomargarine at the factory, and the subsequent actual delivery of the package elsewhere to the purchaser does not necessitate the payment of special tax at the latter place.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 18, 1900.

GENTLEMEN: In reply to your letter of the 5th instant, inclosing a form of bill of sale which you contemplate using in any case in which you are compelled to transfer a refused shipment of an original stamped package of oleomargarine, the proposed form containing a description of the particular package of oleomargarine, together with the date of shipment and the following words: "Be it known, that for value received said oleomargarine is this day hereby sold to ——," you are hereby informed that, if in every such instance this bill of sale is filled up and signed at your factory and mailed from there directly to the person proposing to purchase the package or packages of oleomargarine therein referred to, the sale and constructive delivery are to be regarded as having been thereby made at the factory; and the subsequent actual delivery of the package or packages to the person holding such bill of sale does not involve you or your agent in special-tax liability at the place of such actual delivery.

Respectfully, G. W. WILSON, *Commissioner*.
ARMOUR PACKING COMPANY, *Kansas City, Mo.*

PAWNBROKERS.

(198.)

Special tax—Pawnbroker.

The loaning of money on warehouse receipts, where the goods described therein are not themselves received by the lender into his actual possession, is not the business of a pawnbroker as defined by the statute.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 15, 1900.

SIR: Your letter of the 10th instant has been received, referring to Revenue Agent Alexander's report of the special-tax liability of the Popular Brokerage Company as pawnbrokers.

You transmitted a letter from the manager of that company, wherein he says, with reference to the report by the revenue agent:

As our special tax as bankers, which we have paid for the last three years, covers our business, we can not see how we can come under the pawnbrokers' tax, as we *do not take in any goods*, but only make loans upon collateral and promissory notes, taking warehouse receipts as collateral, the warehouse receipt describing the nature of goods, viz, merchandise, machinery, and personal property. We have no interest in any warehouse whatever.

Upon this statement of the facts, you submit the question whether the Popular Brokerage Company, in loaning money and taking warehouse receipts as pledges or collateral security for the money loaned, do not thereby become pawnbrokers, within the meaning of the third paragraph of section 2 of the act of June 13, 1898, which expressly relates to the business of loaning on a pledge, pawn, or exchange of "any kind of personal property whatever."

You say that in the State of Pennsylvania "a warehouse receipt is undoubtedly personal property, and possession of the warehouse receipt is proof of property in the merchandise, even as against the actual storer of the same."

While this is so, in the opinion of this office it is not among the actual "goods, wares, or merchandise" contemplated by the statute, but is merely a paper instrument representing the goods described therein; and, to loan money thereon, without the receipt into the possession of the lender of the goods therein described, is not the business of a pawnbroker, as that business is ordinarily and usually understood by the general public.

It has already been held by this office that the loaning of money on chattel mortgages, where the chattels themselves are not taken or received, by way of pledge, pawn, or exchange, does not involve the lender in special-tax liability as a pawnbroker. (Ruling No. 20552, TREASURY DECISIONS, 1899, Vol. 1, page 116.) For the same reason the loaning of money on warehouse receipts, where the goods described

therein are not themselves received by the lender into his actual possession, is not the business of a pawnbroker, as defined by the statute, and special tax is not required to be paid by him therefor.

As to the suggestion that, if a contrary position were taken, the payment of the special tax of a banker by the Popular Brokerage Company exempts them from special tax as pawnbrokers, the reply is: That the loaning of money on warehouse receipts for goods is no branch of the business of banks, as set forth in the statute defining bankers, and, therefore, the payment of bankers' special tax in this case has no special application to the question submitted.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

PENALTY.

(232.)

Fifty per cent penalty.

Want of blank forms no excuse for neglect to make returns. Sickness or absence no excuse if the taxpayer is well and present long enough in the month to give a reasonable opportunity to make the return.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 13, 1900.

SIR: The claim of the Northern National Bank for the abatement of \$280, 50 per cent penalty for failure to make return as bankers, assessed on the June list, 1900, has been examined, and is hereby rejected.

You are respectfully informed that special-tax payers are not excused for sickness or absence if the number of days in the month when they are well and present is sufficient to be regarded as a reasonable opportunity for making the returns.

It was claimed that the bank did not receive from the collector any form for making the return required. The furnishing of blank forms to taxpayers is a matter of convenience both to the taxpayers and the officers, and the failure to receive them does not relieve the taxpayers from the 50 per cent penalty incurred by the delay in making the return required. When blanks are not received the taxpayers should make returns under oath in such manner as shall show the facts required by law.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

(239.)

Fifty per cent penalty.

If character of business is disclosed by taxpayers, no penalty accrues.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 3, 1900.

SIR : In further reply to your letter of September 18, you are informed that where a party liable to a special tax addresses a letter to you which is received by you before the close of the month of July, or before the close of the calendar month in which the liability began, and discloses the character of the business in which he is engaged, you should accept the special tax without the 50 per cent penalty. This rule will hold good where a taxpayer discloses to the deputy collector of his division the character of the business in which he is engaged and asks for blanks on which to make a return, notwithstanding the fact that there may not be time enough for you or your deputy collector to visit the taxpayer and present a return, as provided for by section 3173, Revised Statutes.

In all cases where taxpayers disclose their liability, either verbally or in writing, to a collector or a deputy collector, such officers should see that the taxpayer is supplied with a return, or prepare a return for him, as provided in section 3173, Revised Statutes.

No penalty accrues where parties consent to disclose their liability to special tax within the calendar month.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. J. A. WOOD, *Collector Internal Revenue, Portsmouth, N. H.*

(244.)

Relative to special taxes and 50 per cent penalties.

[Circular No. 152.—Int. Rev. No. 254.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 13, 1900.

The annexed tables of special taxes and 50 per cent penalties imposed by law are published for the purpose of enabling collectors to determine, at a glance, the amount of tax and penalty to be reported for assessment, as to each class of special taxes, and for any given number of months, ranging from one to twelve, inclusive, where a fractional part of a cent is involved. In no case does the amount stated vary more than a half cent from the exact amount.

Hereafter collectors will be guided by these tables in their reports in columns 4, 6, and 12, Form 23, unless two amounts are to be reported on one list, say each of 62½ cents, in which case one should be reported as

62 cents and the other as 63 cents; and all such cases may be disposed of in a similar manner—that is, by dropping the fraction in one case and adding it in the other.

Any collection in excess of the amount shown by the table will be included in Form 58, unless included in Form 68; and if any such cases reported by the collector on Form 58 applies to any item in column 12, on Form 23, the page and line of Form 23 must be indicated on Form 58; otherwise, such excess may be added to Form 58 in this office.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary of the Treasury*.

Table of special taxes imposed prior to June 13, 1898.

Designation by article manufactured or sold, etc.	Manufacturers.	Wholesale dealers.	Retail dealers.	Miscellaneous.
Brewers of less than 500 barrels				\$50
Brewers of 500 barrels or more				100
Filled cheese.....	\$400	\$350	\$12	
Liquor.....		100	25	
Malt liquor.....		50	20	
Oleomargarine.....	600	480	48	
Rectifiers of less than 500 barrels				100
Rectifiers of 500 barrels or more.....				200
Still.....	50			
And for each still and worm manufactured.....				20

Certain special taxes imposed by the internal-revenue act of June 13, 1898.

Designation by kind of business and otherwise.	Rates.
Bankers using a capital (including surplus) not exceeding \$25,000.....	\$50
For every additional \$1,000 in excess of \$25,000.....	2
Brokers (except those paying tax as bankers).....	50
Pawnbrokers.....	20
Commercial brokers.....	20
Custom-house brokers.....	10
Proprietors of theaters, museums, and concert halls in cities of more than 25,000 population, as shown by last preceding United States census.....	100
Proprietors of circuses.....	100
Proprietors of other public exhibitions or shows for money.....	10
Proprietors of bowling alleys and billiard rooms, for each alley or table.....	5
Dealers in leaf tobacco and manufactures of tobacco:	
When annual sales do not exceed 50,000 pounds.....	6
When annual sales exceed 50,000 and do not exceed 100,000 pounds.....	12
When annual sales exceed 100,000 pounds.....	24
Dealers in tobacco whose annual sales exceed 50,000 pounds.....	12
Manufacturers of cigars:	
When annual sales do not exceed 100,000 cigars.....	6
When annual sales exceed 100,000 and do not exceed 200,000.....	12
When annual sales exceed 200,000.....	24
Person, firm, or corporation, making, packing, or repacking mixed flour.....	11

Table of special taxes and 50 per cent penalties.

Commencing business in—	Number months liable.	Tax or penalty.	Annual rate in dollars and cents.							
			\$5.	\$10.	\$20.	\$25.	\$50.	\$100.	\$200.	\$400.
June	1	Tax	\$0.42	\$0.83	\$1.67	\$2.08	\$4.17	\$8.33	\$16.67	\$33.33
		Penalty ...	.21	.42	.83	1.04	2.08	4.17	8.33	16.67
May	2	Tax	.83	1.67	3.33	4.17	8.33	16.67	33.33	66.67
		Penalty ...	.42	.83	1.67	2.08	4.17	8.33	16.67	33.33
April	3	Tax	1.25	2.50	5.00	6.25	12.50	25.00	50.00	100.00
		Penalty ...	.63	1.25	2.50	3.13	6.25	12.50	25.00	50.00
March	4	Tax	1.67	3.33	6.67	8.33	16.67	33.33	66.67	133.33
		Penalty ...	.83	1.67	3.33	4.17	8.33	16.67	33.33	66.67
February	5	Tax	2.08	4.17	8.33	10.42	20.83	41.67	83.33	166.67
		Penalty ...	1.04	2.08	4.17	5.21	10.42	20.83	41.67	83.33
January	6	Tax	2.50	5.00	10.00	12.50	25.00	50.00	100.00	200.00
		Penalty ...	1.25	2.50	5.00	6.25	12.50	25.00	50.00	100.00
December	7	Tax	2.92	5.83	11.67	14.58	29.17	58.33	116.67	233.33
		Penalty ...	1.46	2.92	5.83	7.29	14.58	29.17	58.33	116.67
November	8	Tax	3.33	6.67	13.33	16.67	33.33	66.67	133.33	266.67
		Penalty ...	1.67	3.33	6.67	8.33	16.67	33.33	66.67	133.33
October	9	Tax	3.75	7.50	15.00	18.75	37.50	75.00	150.00	300.00
		Penalty ...	1.88	3.75	7.50	9.38	18.75	37.50	75.00	150.00
September	10	Tax	4.17	8.33	16.67	20.83	41.67	83.33	166.67	333.33
		Penalty ...	2.08	4.17	8.33	10.42	20.83	41.67	83.33	166.67
August	11	Tax	4.58	9.17	18.33	22.92	45.83	91.67	183.33	366.67
		Penalty ...	2.29	4.58	9.17	11.46	22.92	45.83	91.67	183.33
July	12	Tax	5.00	10.00	20.00	25.00	50.00	100.00	200.00	400.00
		Penalty ...	2.50	5.00	10.00	12.50	25.00	50.00	100.00	200.00

RETURNS.

(49.)

Special-tax payers—Return Form 11.

A person intending to engage in a business for which special tax is required to be paid must himself sign and swear to the return, Form 11. The return is not to be accepted when signed and sworn to by some other person as "agent" for the special-tax payer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 27, 1900.

SIR: Revenue Agent McGinnis, in a letter to this office dated the 11th instant, states that the city salesmen employed by manufacturers of oleo-margarine "are in the habit of making the return, Form 11, for the grocerymen and others" who retail their product, as retail dealers in oleomargarine, these city salesmen signing and swearing to the Form 11 as agents.

You will please inform all these persons that hereafter returns of this kind can not be accepted, and that in every instance it is the person himself (the groceryman or other person) intending to engage in the business of retailing oleomargarine who must sign and swear to this return.

Where a firm or corporation engages in this business the return, Form 11, must be signed and sworn to by a member of the firm or by an authorized officer of the corporation.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

(92.)

Instructions to collectors with reference to special-tax returns.

[Int. Rev. Circular No. 561.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 9, 1900.

To collectors of internal revenue:

In carrying into effect the provisions of the internal-revenue laws (secs. 3173 and 3176, Rev. Stats., as amended, and sec. 53, act of October 1, 1890, amending sec. 3237, Rev. Stats.) relating to the sworn return that is required of every person, firm, or corporation engaged in any business for which special tax is imposed, attention has heretofore been directed almost exclusively to the duty devolving upon the special-tax payer to render this return to the collector or deputy collector within the calendar month in which the liability began, without particular reference to the obligation resting upon collectors to direct their deputies to call upon all persons in their districts, known to be in business for which special tax is required, to make the sworn return within the time prescribed. The result of this is that, in a great and (since the war-revenue act of June 13, 1898, went into effect) constantly increasing number of cases, honest special-tax payers, who had no intention to withhold their sworn returns and who would promptly have made these returns within the calendar month of their liability, had their attention been specially called to the matter, have, through oversight, failed to render the returns, and thereby incurred the 50 per cent penalty under the mandatory provision of section 3176, Revised Statutes.

The interests both of the Government and of these taxpayers now require that steps be taken by the local internal-revenue officers to procure the special-tax returns hereafter within the time prescribed.

To depend wholly upon general references to the requirements of the statutes and the public notices posted up is not enough. Collectors are, therefore, instructed to direct their deputies to copy from the alphabetical list of special-tax payers the names and addresses of all persons, firms, and corporations who are in business continuously from year to year in the various divisions of their districts and to furnish each of them, before the beginning of the approaching special-tax year, with the form for the return, and to obtain the requisite signature and oath thereto.

Every banker, and every banking firm, or banking corporation appearing in the alphabetical list should be called upon and provided with the Form No. 457, accompanied by explicit information that neglect to fill up, sign, and swear to this return, and place it in the hands of the collector or his deputy before the expiration of the month of July, would necessitate the addition of 50 per cent to the amount of

the tax. The same course should be pursued in the cases of other persons, firms, and corporations in regular business, from year to year, whose special-tax returns are required to be rendered on Form 11.

In the last week of June all the sworn returns received for the special-tax year beginning July 1 should be compared with the alphabetical list, and if returns of any persons, firms, or corporations in that list are missing, the deputy collectors should be directed to obtain them without delay, in order to prevent the 50 per cent penalty from being incurred.

There remain those persons whose names are not in the list, who have begun business for which special tax is required to be paid. Every effort possible should be put forth by deputy collectors to ascertain these cases and to obtain the sworn return in each case before the end of the calendar month in which the business was commenced.

Section 3172, Revised Statutes, as amended, reads:

Every collector shall, from time to time, cause his deputies to proceed through every part of his district and enquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

By a faithful execution of this law, the Department is convinced that the necessary information can be had to enable the deputies to obtain timely returns from all persons liable for special tax, except those who conceal their business on account of local prohibitory laws, or for other reasons. Such persons can have no grounds for complaining of hardship and injustice in the exaction of the 50 per cent penalty for their failure to make the sworn returns within the calendar month in which their business was commenced.

Proprietors or agents of circuses and other shows traveling from place to place and giving exhibitions invariably make known to the public, by conspicuous posters and by advertisements, the date of the arrival of their shows in any State or Territory.

Every collector will be expected to require his deputy to take notice of these advertisements and to proceed to obtain the sworn return in every such case, and to collect the special tax, and issue the requisite stamp, immediately upon the appearance of the show within his State and district. The deputy must not wait until he receives notice from the proprietor or agent of the show, but must himself act at once as herein directed.

G. W. WILSON, *Commissioner.*

SHOWS.

(See EXHIBITIONS AND SHOWS.)

STILLS.

(5.)

Special tax—Pharmaceutical stills.

The manufacturer of a still that is to be used only for pharmaceutical purposes, or for distillation of volatile oils, is not required to pay special tax thereon, provided he furnish to the collector evidence under oath setting forth the purpose for which the still is to be used.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 5, 1900.

SIR: In reply to your inquiry of the 20th ultimo, you are hereby informed that the manufacturer of a still that, as you state, is "to be used only for pharmaceutical purposes" or for "the distillation of volatile oils only, such as peppermint, lavender, etc.," is not required to pay special tax thereon, nor special tax as a manufacturer of stills, provided that he furnish to the collector of the district evidence under oath setting forth the purposes for which the still is to be used, and that it is not to be used for the distillation of ethyl alcohol. (See the settled ruling on this subject as published in volume 36, Internal Revenue Record, on page 285. * * *)

But every still must, immediately upon being set up, be registered with the collector in strict compliance with the provisions of section 3258, Revised Statutes. * * *)

Respectfully,
Dr. A. W. THORNTON, *Ferndale, Wash.*

G. W. WILSON, *Commissioner.*

(11.)

Special tax—Vinegar stills.

A still made for use in the manufacture of vinegar comes under the ruling as to stills not used in the distillation of the spirits defined by the internal-revenue laws, and special tax is not required to be paid thereon.—Ruling 20878 revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

SIR: I have received your letter of the 16th ultimo, inclosing a report from Special Gauger Wade in regard to a wooden still set up in the vinegar factory of Amos Haynes, at 65 Washington street, East Somerville, Mass., for the "production of low wines to be used in the manufacture of vinegar."

Mr. Wade refers to decision 20878, dated March 16, 1899, as authority

for reporting Messrs. Badger & Sons, the manufacturers of this still, as liable for special tax thereon under the second paragraph of section 3244, Revised Statutes.

Upon further consideration of the question the decision referred to is hereby revoked ; and it is held that the ruling as to stills in volume 36, Internal Revenue Record, on page 285, should govern, not only with reference to the stills therein described, but also to any still made for use in the manufacture of vinegar in a vinegar factory, as such a still is, under the law and rulings, merely a vaporizing apparatus, and is not permitted to be used for the manufacture of distilled spirits. (See letter to Collector Harvey of May 19, 1879, 25 Internal Revenue Record, 157.) Special tax is not required to be paid thereon.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. F. D. SEWALL, *Revenue Agent, Boston, Mass.*

(64.)

Special tax—Stills.

The statutory provision imposing special tax on stills is held not to apply to a still that is shown not to be intended for the production of the spirits defined by the internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 8, 1900.

SIR: Your letter of the 3d instant has been received, inclosing a letter from your deputy at Wheeling, Mr. Singleton, stating that a copper worker in that city "wishes to put in a bid to manufacture a still for the distilling of water for the laboratory of the Bellaire Steel Works."

You may inform your deputy that if this manufacturer furnishes you a statement, under oath, setting forth that the still in question is not to be used for the production of spirits, and stating specifically the actual purposes for which it is to be used, it may be removed and set up at the Bellaire Steel Works for the purpose of the distillation of water without the payment of special tax thereon ; but that the Bellaire Steel Works Company must, immediately upon setting up the still, register it with you in strict accordance with the requirements of section 3258, Revised Statutes. (See ruling in regard to stills in letter to Collector Hill as published in volume 36, Internal Revenue Record, on page 285.)

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. A. B. WHITE, *Collector Internal Revenue, Parkersburg, W. Va.*

(193.)

Registry of stills.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 4, 1900.

To collectors of internal revenue:

As there appears to be reason to believe that some neglect exists on the part of proprietors of stills used for purposes other than the distillation of spirits to properly register the same, the special attention of collectors is directed to the fact that the statute, section 3258, requires that every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district.

This registry is required to be made in duplicate on Form 26, one copy to be sent to the Commissioner of Internal Revenue, and applies to all stills of whatever size, and for whatever purpose intended, whether for the distillation of spirits, turpentine, oil, or for pharmaceutical or other purposes.

Collectors will promptly notify the proprietors of all stills who have not filed the required registries to do so at once, as heavy penalties are incurred by a failure to comply with the statute in this regard.

G. W. WILSON, *Commissioner.*

THEATERS.

(132.)

Special tax—Theaters.

The proprietors of a theater, in a city of more than 25,000 population, for admission to which entrance money is not received, but where vaudeville performances are given, for witnessing which the persons present "are expected to order refreshments," must be regarded as giving a public exhibition for money, for which they are required to pay special tax of \$10, under the eighth paragraph of section 2, act of June 13, 1898. It is not a theater for which the special tax of \$100 is required to be paid under the sixth paragraph of that section.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 23, 1900.

SIR: In reply to your letter of the 15th instant, concerning the proprietors of the Casino theate of Sacramento, you are hereby advised that, as you state, "no admission is charged to the performances, which are vaudeville in character," the special tax of \$100 is not required to be paid for this theater, under the sixth paragraph of section 2 of the act of June 13, 1898, which, in express terms, applies only "to theaters, museums, and concert halls" in cities of more than 25,000 population "for admission to which entrance money is received." But, in view

of the further fact, which you state, that "while no price of admission is charged, on the walls of the theater a placard is posted calling attention to the fact that patrons are expected to order refreshments as the waiters pass around," this theatrical exhibition must be regarded as a public exhibition or show for money within the meaning of the eighth paragraph of that section, and the special tax of \$10 must, accordingly, be required to be paid therefor.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. H. C. BELL, *Collector Fourth District, Sacramento, Cal.*

(140.)

Special tax—Proprietors of theaters, etc.

In ascertaining and collecting the special tax imposed upon proprietors of theaters, etc., in cities having more than 25,000 population, under paragraph 6, section 2, act of June 13, 1898, the census begun June 1, 1900, is not to be taken as the last preceding census with reference to the special-tax year beginning July 1, 1900.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 31, 1900.

SIR: Your letter of the 26th instant has been received, referring to that provision of paragraph 6 of section 2 of the act of June 13, 1898, which reads: "Proprietors of theaters, museums, and concert halls in cities having more than twenty-five thousand population as shown by the last preceding United States census, shall pay one hundred dollars," and inquiring, "as a new census will be taken June 1, 1900, will that census be the last preceding census for the special-tax year beginning July 1, 1900?"

You are hereby advised in the negative, if, as it is understood, the figures of the census, though taken on the 1st of June, can not be made up and announced until some months later than the month of July.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. J. G. MONAHAN, *Collector Second District, Madison, Wis.*

(234.)

Special tax—Theaters and opera houses.

Proprietors of theaters and opera houses in cities whose population as shown by the former census was 25,000 or less are not to be called on to pay special tax for the current year because of newspaper announcements that the recent census shows a population for these cities of more than 25,000.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 23, 1900.

SIR: I have received your letter of the 27th ultimo relating to proprietors of theaters and opera houses in cities in your district which, as

shown by the census of ten years ago, had a population of 25,000 or less, but according to announcements in the newspapers are shown by the present census to have a population of more than 25,000.

As these theaters, etc., had been opened for public exhibitions before the completion and announcement of the present census, and the newspaper announcements are not to be taken as official, and the official bulletins of the Census Office have not, as yet, been generally distributed, you need not take any action looking to the exaction of special tax in these cases for the current year unless you shall hereafter be otherwise instructed by this Department.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. W. FRANK KINNEY, *Collector Internal Revenue, Hartford, Conn.*

(260.)

Special tax—Opera house.

The proprietor of a theater building or opera house in a city of less than 25,000 population is not required to pay any special tax therefor. Each company playing therein must pay the special tax and take out its own stamp.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., December 31, 1900.

SIR: Your letter of the 21st instant has been received, stating that the agent of the opera house in Portsmouth, N. H., a city of less than 25,000 inhabitants, has taken out a special-tax stamp for that building, and contends that, under this stamp, the proprietors or agents of the various theatrical companies engaged by him to play there are entitled to give their exhibitions in that house without themselves paying special tax.

You are sustained by this office in declining to accept his view of the law, and he should send in his special-tax stamp with a claim in the prescribed form for its redemption.

The proprietor or agent of a theater building or opera house in a city whose population is less than 25,000 is not required to pay any special tax therefor. The manager of each theatrical company engaged by such proprietor or agent to give exhibitions in his house must pay the special tax and post up the requisite stamp for such exhibitions given therein by him, even when the agent of the building, as in the case which you state, himself has possession of the box office and receives the money and under agreement pays to the manager of the exhibiting company "a certain per cent of the gross receipts for the evening," and "advertises in advance at his own expense, and assumes all liability for the expenses of the exhibition except board of the company and transportation." Each separate company exhibiting therein must post up there its own special-tax stamp.

Respectfully,

ROBT. WILLIAMS, Jr., *Acting Commissioner*.

Mr. J. A. WOOD, *Collector Internal Revenue, Portsmouth, N. H.*

TRANSFER SPECIAL-TAX STAMP.

(241.)

Special-tax stamp—Transfer.

When a special-tax payer removes from one State to another, his special-tax stamp may be transferred under the provisions of section 3241, Revised Statutes, and the regulations; but when he sells out his business, his special-tax stamp can not be transferred to the purchaser to cover the same business carried on by the latter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1900.

SIR: In reply to your letter of the 2d instant concerning the special-tax stamps taken out by you as a broker and commercial broker for the year beginning July 1, 1900, under which you have carried on business until the 27th ultimo, when you sold out your business to Mr. V. M. Fulcher, and forwarded these stamps to the collector for transfer to Mr. Fulcher, you are hereby advised that the collector has correctly informed you that these stamps can not, under the law, be transferred to cover the same business carried on by Mr. Fulcher. They are not licenses, as you suppose, but merely receipts for tax, and there is but one case in which a special-tax stamp issued to one person can be made use of to cover the same business carried on by another person, and that is the case of the death of the special-tax payer, which is expressly provided for by section 3241, Revised Statutes.

In the event of your reopening the same business in the State of Alabama, as you contemplate, your special-tax stamps can be transferred from the district of Florida to the district of Alabama under the provisions of section 3241, Revised Statutes, upon compliance with the regulations herewith inclosed.

If you should discontinue the business of broker and commercial broker altogether, this would not entitle you to any rebate or allowance on account of the special tax which you have paid. The business having been carried on by you in July, 1900, the law (sec. 3237, Rev. Stat.) required the payment of the special tax for the entire year ending June 30, 1901, without reference to the contingency of your discontinuing the business before the expiration of the year for which the stamps were issued.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
MR. N. H. HOLMES, *Pensacola, Fla.*

STAMP-TAX DECISIONS.

[See DECISIONS (Tobacco), No. 185 ; (Porto Rico), Nos. 109, 115, 203.]

BILLS OF LADING.

(6.)

Stamp tax—Export bills of lading.

Opinion of the Attorney-General on the question of the taxability of export bills of lading or receipts, issued for goods shipped from the United States to Canada or Mexico by rail.—Such instruments taxable at the rate of 1 cent instead of 10 cents, as heretofore.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 5, 1900.

SIR: Inclosed I transmit for your information and guidance an opinion of the United States Attorney-General in regard to the taxability of export bills of lading or receipts issued by carriers covering goods exported from the United States to Canada or México by railroad cars, under Schedule A, act of June 13, 1898.

It will be seen that the Attorney-General is of the opinion that such export bills of lading or receipts, issued for goods shipped by rail from the United States to Canada or Mexico, require a 1-cent stamp and not a 10-cent stamp, as heretofore required by this office. All former rulings of this office on this subject are hereby modified to conform to said opinion. * * *

Respectfully,
Mr. C. H. TREAT, *Collector Internal Revenue, New York, N. Y.*

G. W. WILSON, *Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., January 2, 1900.

SIR: I have the honor to acknowledge the receipt of your communication of December 19, 1899, submitting for my opinion the following questions:

"1. As to whether export bills of lading issued by carriers covering goods exported from the United States to Canada by railroad cars are taxable under Schedule A, act of June 13, 1898, at the rate of 10 cents for each shipment or at the rate of 1 cent.

"2. Whether the same ruling applicable to Canadian exports by railroad would also apply to exports by railroad from the United States to Mexico, another contiguous foreign territory."

The answer to these interrogatories depends upon the determination as to which of two clauses of the war-revenue act of 1898 governs the taxation of bills of lading for goods exported by railroads from places within the United States to Canada or Mexico. The two clauses referred to are the following:

A. "Bills of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents."

B. "*Express and Freight*: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person, whose occupation is to act as such, to issue to the shipper or consignor or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and cancelled, as is in this Act provided, to each of said bills of lading, manifests or other memorandum, and to each duplicate thereof, a stamp of the value of one cent:" etc., etc.

Upon a broad and general interpretation of the language of these provisions, the ordinary freight receipts or bills of lading issued by railroad companies evidencing the receipt of goods to be transported from the United States to any place in Canada or Mexico would be taxable under either clause. Because such manifests or receipts as are referred to and as are usually issued by railroad companies upon the receipt of freight for transportation are within the broader meaning of the term bills of lading, and, therefore, would be taxable under Clause A, they are also undoubtedly within the class of instruments included within Clause B. There being, therefore, a necessity of determining by legal construction which clause of the war-revenue act is intended to cover this particular kind of instruments, we must resort to the ordinary rules of interpretation and seek to discover otherwise than by a resort to the broadest and most general meaning of the words the particular clause of the act which the will of Congress intended should apply.

Resorting, therefore, to other parts of the same act, we find the following provisions, which may be cited as tending to shed some light upon the question:

C. "*Charter Party*: Contract or agreement for the charter of any ship, or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship or vessel, or steamer, and any other person or persons, for or relating to the charter of such ship, or vessel, or steamer, or any renewal or transfer thereof, if the registered tonnage of such ship, or vessel, or steamer does not exceed three hundred tons, three dollars," etc.

D. "Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port—If the registered tonnage of such ship, vessel, or steamer does not exceed," etc.

E. "Passage ticket, by any vessel from a port in the United States to a foreign port, if costing not exceeding thirty dollars, one dollar," etc.

F. "*Provided*, That the stamp duties imposed by the foregoing schedule on manifests, bills of lading, and passage tickets shall not apply to steamboats or other vessels plying between ports of the United States and ports in British North America."

The phrase "bills of lading" and the words "port," "export," etc., are derived from the maritime law, and originally related exclusively to matters connected with navigation and shipping. A bill of lading, in maritime jurisprudence, signifies a memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order on board of his ship or vessel therein named at the place therein mentioned certain goods therein specified, which he promises to deliver in good order, the dangers of the sea excepted, at the place therein appointed, for the delivery of the same

to the consignee named therein, or to his assigns, he or they paying freight for the same. This was the primary meaning of the term. A charter party was a contract for the letting of the whole or part of a ship for the conveyance of goods in consideration of the payment of freight. So, also, in its earliest use the word "export" meant the carrying out of goods from one country into a foreign country by means of a ship. Modern methods of business and transportation have made the use of receipts or manifests in the nature of bills of lading applicable to transportation by carriers by land, and such receipts or manifests are now frequently described as bills of lading. In the same way goods are now frequently exported by railroad cars as well as by vessels.

It is obvious that when the act in question refers to the subject of charter parties and fixes the tax thereon, as well as when it refers to manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port, or to passage tickets by any vessel from a port in the United States to a foreign port, it is referring exclusively to matters within the realm of maritime law, and is dealing only with vessels engaged in the foreign trade. In my judgment, it was in the same sense that Clause A, referring to bills of lading for goods to be exported from a port or place in the United States to any foreign port or place, was intended to be considered. This conclusion is derived from several considerations:

1. Clause B, under the title of "Express and freight," has fully and specifically covered the taxation of manifests or receipts issued for goods received for transportation by railroad companies. There can be no question but what in every case of a shipment by rail from any point in the United States either to another point in the United States or to a point out of the United States, the company is bound to issue a receipt under the express and freight clause, and to place thereon a 1-cent stamp. In all instances where goods are received for transportation by rail in the United States, some part of the carriage must be through our own territory, and certainly for that portion of the carriage a stamp receipt is necessary under Clause B. It would also seem to be necessary to hold, if Clause A is applicable to such cases, that an additional stamp of 10 cents must be placed upon the receipt or manifest in case the goods are to be transported to a place outside the United States; but unless the language of the act positively requires it, it will not be held that Congress intended to impose duplicate taxation upon this branch of business. A meaning will be sought for that will give reasonable and adequate effect to each clause, so that each can have full and complete operation within its own sphere of application. Such a result we obtain from a construction which restricts Clause A to a maritime sense as referring only to transportation by vessels in the foreign trade, exclusive of all ports of British North America.

2. The war-revenue acts of 1862 and 1864 contained a clause in precisely the same language as Clause A under consideration; nevertheless, the Treasury Department never attempted by virtue of that provision to impose a stamp tax upon railroad companies transporting goods to Canada by rail during the whole period those acts remained in force. This was not because the Department was not desirous of imposing, if possible, a revenue tax upon railroad freight receipts, for it appears that several attempts were made by the Internal Revenue Office to subject such receipts to taxation under other clauses of the acts of 1862 and 1864, though unsuccessfully. The fact that during the whole time that this clause remained unrepealed as a part of the acts of 1862 and 1864, a

construction was put upon it by the revenue bureau, which limited its application to goods exported by vessels engaged in the foreign trade, is very cogent and conclusive testimony as to the scope and effect the same clause was intended to have by the Congress which passed the war-revenue act of 1898.

What is known as Departmental construction of a statute is, in proper instances, a very important method of determining the true legal construction to be placed upon acts of Congress. As was said by Mr. Justice Brown in *Schell's Executors v. Fauche* (138 U. S., 562-572): "In all cases of ambiguity the contemporaneous construction, not only of the courts, but of the departments, and even of the officers whose duties it is to carry the laws into effect, is universally held to be controlling."

When there is added to this Departmental construction the subsequent readoption of the same language by Congress in another act, it is conclusive that Congress, in the absence of language to the contrary, intended the same construction and effect to be given to the words in the latter as in the former instance.

In this connection, it is to be noted that the Proviso F exempting from stamp duties manifests, bills of lading, and passage tickets issued by steamboats and other vessels plying between ports of the United States and ports in British North America, was also contained in the act of 1862. It thus appears that Congress, in both instances, had in view the policy of exempting from taxation bills of lading on vessels engaged in the foreign trade with ports of British North America, leaving the duties to be paid upon business of that nature transacted by vessels going to other foreign ports.

3. To hold that Clause A covered bills of lading or manifests issued by railroad companies for goods received by them for transportation by rail from points in the United States to Canada would be to hold in effect that Congress intended to make a manifestly unjust discrimination against that particular class of traffic. This will appear from a comparison of freight rates by railroad to Canada and by vessels to Liverpool. The minimum rate for merchandise weighing less than 100 pounds from Boston to Montreal is 45 cents. A stamp tax of 10 cents upon such shipment would equal 22 per cent of the gross freight, but inasmuch as the American railroads, which would have to pay this tax, receive only a portion of the total freight charge, the percentage of tax to the freight received by the American road would be much greater.

The minimum rate of freight for merchandise from Boston to Liverpool on similar quantities is 21 shillings; the tax of 10 cents on such a shipment would amount to only 2 per cent of the total freight, but by the proviso of the act all shipments by vessel to Canadian ports are required to pay no stamp tax whatever. It is not probable that it was the intention of Congress to make so serious a discrimination against the railroad carriers. No reason for such a discrimination is suggested or in any way appears, and in the absence of explicit language requiring such a construction it will not be presumed that Congress intended so to discriminate.

I, therefore, advise you that upon bills of lading, receipts, manifests, and other similar documents issued by railroad companies for the receipt of goods to be transported by rail from any place in the United States to Canada, a stamp tax of 1 cent is payable under the clause headed "Express and freight," and that no tax is payable thereon under the

clause relating to goods exported from a port or place in the United States to any foreign port or place. The same rule should be applied to shipments by rail to Mexico.

Very respectfully, JOHN W. GRIGGS, *Attorney-General*.
The SECRETARY OF THE TREASURY.

(59.)

Exportation of Schedule B articles in bond—Proof required.

Exportation of articles in bond must be billed direct from manufactory to consignee at foreign port.—Articles billed (not sold) to an agent must be recased and exported or exported without change by the agent within ninety days from date of removal for export, the agent to secure duplicate bills of lading in the name of the principal and forward same to him.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 6, 1900.

SIR: Your letter of the 1st instant, stating that complaint has been made to you that it is the practice of manufacturers of Schedule B articles located at points outside of the port of New York to consign unstamped articles produced by them to dealers in New York City for the purpose of export, has been received.

Article 5, regulations, series 7, No. 24, requiring that goods when removed for export must be consigned directly to the collector of customs, has been superseded by Supplement No. 1, revised March 10, 1899.

These regulations contemplate the exportation of Schedule B articles free of tax in bond, only as follows:

1. That the articles be billed direct from the manufactory to consignee at foreign port.
2. That the articles be billed to an agent (not sold to said agent) to be recased and exported or exported without change by the agent within ninety days from date of removal for export, said agent to secure duplicate foreign bills of lading in the name of his principal (the manufacturer or bottler) and forward the same to him.

Collectors of internal revenue should refuse to accept foreign bills of lading as proof of exportation of Schedule B articles unstamped, in bond, unless such bills of lading are made in the name of the manufacturer or bottler in each case.

If a dealer desires to buy and export Schedule B articles manufactured or bottled by some one else, such dealer should obtain tax-paid articles and then make claim for drawback, as provided by regulations, series 7, No. 24.

Respectfully, ROBT. WILLIAMS, JR., *Acting Commissioner*.
MR. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(71.)

Stamp tax—Export bills of lading.

A 10-cent stamp must be affixed to bills of lading issued for goods exported to foreign countries, with certain exceptions as to Mexico and Canada. The constitutionality of this provision is to be decided by the United States Supreme Court.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 15, 1900.

SIR: Mr. Robert G. Evans, United States attorney, St. Paul, Minn., has informed this office that complaint has been made against the Northern Pacific Railway Company and Frank M. Fairbanks, its agent, for refusal to affix a 10-cent stamp to bills of lading issued for foreign countries other than Mexico and Canada, as required by the act of June 13, 1898. The company declined to pay this tax, alleging that Congress could not lay duties on exports, and that a tax on a bill of lading given for the export was a tax on the export itself.

The case was tried in the United States district court at Minneapolis, Minn., and a verdict of guilty was rendered against both the company and its agent, and the court thereupon imposed a fine upon each of the defendants. It is the intention of the company to sue out a writ of error to the Supreme Court of the United States, under section 5 of the act of March 3, 1891 (26 Stat., 826).

It is hoped to obtain an early decision upon the question. You will insist that hereafter the company affix a stamp to all export bills of lading, as required by law, with certain exceptions as to Mexico and Canada. (See opinion of Attorney-General, internal-revenue decision No. 6, dated January 5, 1900.)

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. F. VON BAUMBACH, *Collector Internal Revenue, St. Paul, Minn.*

(78.)

Stamp tax—Duplicate bills of lading, etc.

All copies of instruments issued by carriers to consignors held liable to taxation as duplicates.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March, 20, 1900.

SIR: Your letter of the 20th of December last, with respect to the tax on copies of bills of lading, has been carefully considered, together with the argument of Senator Mason, filed on the 7th of March.

The act providing for the stamping of some instrument issued by the carrier to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, does not make it obligatory

that a technical bill of lading should be issued in any case, as counsel seems to assume. The instrument to be issued is referred to as a "bill of lading, manifest, or other evidence of receipt and forwarding." Again, when the stamp tax is imposed the language used is, "There shall be duly attached to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent." So it is not a duplicate bill of lading that is referred to alone, but equally a duplicate manifest, or a duplicate memorandum, or a duplicate of any other instrument of writing which should contain evidence of receipt and forwarding.

The question of tax turns upon the meaning of the word "duplicate." Webster's Dictionary, the accepted authority in this Department in the definition of words, gives the following, the first being the ordinary meaning, and the second the technical meaning :

Duplicate:

1. That which exactly resembles or corresponds to something else. Another, correspondent to the first—hence, a copy, a transcript, a counterpart.

2. (Law.) An original instrument repeated. A document which is the same as another in all essential particulars, and differing from a mere copy in having all the validity of an original.

It will be seen that the ordinary meaning of the word "duplicate" is "a copy," and it has been the rule of this office to construe words used in statutes according to their ordinary meaning and acceptation, unless the intent of the statute imperatively required that a technical significance should be given them. Endlich on the Construction of Statutes says that "In general statutes are presumed to use words in their popular sense," and "it is probably not inaccurate to say that as between two meanings of a word, the ordinary and popular meaning is in general to be preferred, and is most frequently in harmony with the subject-matter and object of the enactment."

Other eminent authorities are in accord with this dictum. I, therefore, rule that the word "duplicate," as used in the paragraph of Schedule A, headed "Express and freight," includes all copies, and every copy of any instrument evidencing the receipt and forwarding of goods issued by the carrier, or his agent, must bear a 1-cent stamp, and any memorandum made on the same that it is "merely a copy," "not a bill of lading," "not a duplicate," "not a contract," "not negotiable," "merely an acknowledgment," etc., will have no effect to exempt the copy from taxation as a duplicate.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. J. M. DICKINSON,

General Solicitor, Illinois Central Railroad Company, Chicago, Ill.

(86.)

Exportation of proprietary articles in bond.

Method of exporting Schedule B articles by persons other than the manufacturer without being stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 31, 1900.

SIR: In reply to your letter received on the 30th instant relative to the exportation of proprietary articles in bond, you are advised that the regulations governing the matter (series 7, No. 24, supplement No. 1, March 10, 1899, article 5) require the manufacturer to file with the collector of the district duplicate bills of lading covering the transportation of the articles to a port or place outside the jurisdiction of the United States, and that such bills of lading must clearly describe the articles by marks and serial numbers.

Provision is made in articles 3 and 8 of these regulations for the forwarding of goods through an agent at port of export, who is permitted to export the goods and is likewise required to furnish the collector with bills of lading covering the goods exported, unless such information is furnished by the manufacturer.

It appears that in some cases the agent who ships to his own customers prefers not to furnish this information to the manufacturer. There would seem to be no objection, however, on his part to furnish the information directly to the collector for internal-revenue purposes only. In such cases the manufacturer should duly constitute such person his agent by a proper instrument in writing, executed in duplicate, and file the same with the collector of internal revenue, who will retain one copy and forward the other to the Commissioner of Internal Revenue. The agent's bills of lading, showing names of foreign consignees, will, from time to time, be forwarded by him to the collector with the invoices of the goods received from the manufacturer, showing the number of cases and contents, the serial numbers of the cases forwarded, and the name of the foreign port.

The collector will in such cases forward the complete set of papers which thus prove the actual exportation of the articles withdrawn from the manufactory for export.

Respectfully,
Mr. T. H. BRERETON, *Washington, D. C.*

G. W. WILSON, *Commissioner.*

(101.)

Bills of lading for articles exported free of tax under section 22, act of June 18, 1893.

[Circular No. 48.—Int. Rev. No. 562.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 18, 1900.

To collectors of internal revenue and others:

To facilitate the exportation of proprietary articles in bond, free of tax, where the articles are exported by or through commission brokers or other agents, collectors of internal revenue, with whom the manufacturer's export bond is filed, may hereafter accept export bills of lading when issued to such brokers or agents, provided the bills so issued are satisfactory in all other respects. Where, however, the articles are recased with other goods, or are exported by a person other than the manufacturer, the following indorsement should be made on the bill by the shipper:

The merchandise described as per this bill of lading includes ——— packages of ———, bearing serial Nos. ———, shipped for account of ———.

The number and contents of the packages, their serial numbers, and the name of the manufacturer should in all cases be stated for identification. A revenue stamp of the denomination of 10 cents must be affixed to each *original* bill; and where the shipper desires to retain such original, a duplicate or copy showing that the original is duly stamped may be furnished.

G. W. WILSON, *Commissioner.*

Approved: L. J. GAGE, *Secretary of the Treasury.*

BONDS.

(15.)

Stamp tax—Bonds of indemnity, and fidelity and guaranty insurance.

Showing the relationship to the law of those engaged in the business of fidelity and guaranty insurance and the tax accruing on the instruments evidencing said insuranceship, and the renewals of said instruments, and the tax accruing when a bond of indemnity is given by a principal and guarantied by a surety company, and on the renewals of the same.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 11, 1900.

SIR: I am in receipt of your letter of December 18, 1889, submitting for my consideration and ruling the question as to the proper taxation accruing upon instruments executed by surety companies under which

they become the surety as to the fidelity of employees. The paragraphs in Schedule A to be construed in this particular are as follows:

1. Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents.

2. Insurance (casualty, fidelity, and guarantee): Each policy of insurance, or bond or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of accident, fidelity, employer's liability, plate glass, steam boiler, burglary, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance), and each bond undertaking or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, and each contract or obligation guaranteeing the validity or legality of bonds or other obligations issued by any State, county, municipal, or other public body or organization, or guaranteeing titles to real estate or mercantile credits executed or guaranteed by any fidelity, guarantee, or surety company upon the amount of premium charged, one-half of one cent on each dollar or fractional part thereof.

For the purpose of facilitating reference to these paragraphs of the law, I will quote such parts of them as are pertinent to the questions to be considered:

1. Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, * * * not otherwise provided for in this schedule, fifty cents.

2. Insurance (* * *, fidelity, and guarantee): Each policy of insurance, or bond or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of * * *, fidelity, * * * insurance * * *, and each bond undertaking or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, * * * executed or guaranteed by any fidelity, guarantee, or surety company upon the amount of premium charged, one-half of one cent on each dollar or fractional part thereof.

I shall consider the relationship of the guaranty company to the requirements of these paragraphs in respect to two positions that it can occupy—

First. When it becomes a surety for the acts of an employee and such suretyship is evidenced by an instrument to which the employee is not a party; and

Second. When it becomes a surety for the employee who, as principal, is a party to the instrument in addition to the surety company.

Considering this first relationship, I am of the opinion that the paragraph in Schedule A numbered 1 above, has no application—that is, that the document executed by the surety company is in the nature of a policy of insurance, insuring and guarantying the fidelity of an employee, said employee not being a party to the document. In this instance but one taxation can accrue, and that is the tax of one-half of 1 cent for each dollar or fractional part thereof charged as a premium for the issuing of the instrument.

The second relationship involves the construction of both of the paragraphs numbered 1 and 2 above. Paragraph numbered 1 relates entirely to the employee or principal who is a party to the instrument and whose bond it is. In cases of this kind, when a principal (the employee) executes this instrument it is his bond for the “due execution or performance of the duties of his office or position,” and in this respect the instrument is, as to him, subject to a tax of 50 cents. In an instance of this kind the surety company guaranties the due execution or performance of these duties, and to save the employer harmless by reason of such losses through the acts of the employee as are specified in the instrument evidencing the transaction. This is, as to the guaranty company, its policy of insurance, and in this respect the instrument should be stamped in an additional amount—that is, one-half of 1 cent for each dollar or fractional part thereof of premium charged.

The above relates entirely to the document when first issued. After its issuance, if the term of the instrument ceases—that is, if there should come a time in which the act of the employee is, as to him, not covered by the instrument to which he is a party, and, if there should also come a time at which the liability of the guaranty company’s insurance ceases, there are other clauses in Schedule A applicable to this situation. One, covering the position of the surety company, is to be found in the paragraphs first hereinbefore quoted, and numbered 2. It is as follows:

Insurance (casualty, fidelity, and guarantee): Each policy of insurance, or bond or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, *or renewed*.

The phrase “or renewed” in the clause above quoted covers every additional premium charged by the guaranty company, and the instrument evidencing this should be stamped at the rate of one-half of 1 cent for each dollar or fractional part thereof of premium charged.

The other clause in the act is to be found in the proviso of the paragraph in Schedule A relating to mortgage or pledge of lands, etc. It reads as follows:

Provided, That upon each and every assignment or transfer of a mortgage, lease, or policy of insurance, or the renewal or continuance of any agreement, contract, or charter, by letter or otherwise, a stamp duty shall be required and paid at the same rate as that imposed on the original instrument.

This relates to the principal, and if the principal renews his obligation an additional tax of 50 cents is, as to him, applicable under the renewal of his contract, it being the stamp duty at the same rate as would be imposed on the original instrument. In this particular the fact to be established is, Does the principal renew an obligation that has ceased? If he does, a tax accrues; if he does not, there can, of course, be no renewal, and consequently no tax as to him.

In so far as renewals are concerned, the surety company can in no case be liable for a tax accruing under the paragraph in Schedule A, first hereinbefore quoted and numbered 1. In other words, there can not accrue as to the guaranty or surety company a tax of 50 cents in any event.

I am of the opinion that the paragraph in Schedule A relating to insurance, "casualty, fidelity, and guarantee," was enacted by Congress to provide for a proper tax on instruments executed by persons, associations, companies, or corporations who transacted the business of fidelity, guaranty, and surety insuranceship for compensation, and that whenever this situation arises the instrument evidencing the transaction comes within the purview of the insurance paragraph referred to, and no other paragraph of the act, in so far as the act of the person, association, company, or corporation guarantying the fidelity of a principal is concerned.

Under this ruling there should be no difficulty in construing the law in reference to the document when issued. In regard to the tax accruing upon a renewal there may be more difficulties presented, but if the fact is borne in mind that there can be no tax of 50 cents as to the principal unless he renews his bond, and there can be no tax of one-half of 1 cent as to the guaranty company unless they charge another premium for a renewal of their obligation, it would seem that what might be an apparent difficulty would in fact be a matter of simple solution.

It is presumed that the surety companies, or the majority of them at least, have able counsel, perfectly competent to pass upon the instruments to which their respective companies are parties, and that the ruling I have made will be applied to such instruments according to their form and covenants and the proper taxation accruing be represented by the affixing and canceling of stamps in the amount found to be due under said construction.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. H. D. LYMAN,

President American Surety Company, New York, N. Y.

(40.)

Dramshop bonds.

Under the laws of the State of Illinois and the ordinances of the city of Chicago, it is necessary for a party making application for license as saloon keeper to file a bond with the city collector.—The case of *United States v. Ambrosini* involves the question as to whether the Government can require such bonds to be stamped under the war-revenue act of 1898.—Decision in favor of the Government.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 10, 1900.

The following opinion of the United States district court for the northern district of Illinois is published for the information of officers of internal revenue and others concerned.

G. W. WILSON, *Commissioner.*

UNITED STATES *v.* AMBROSINI.

Opinion by SEAMAN, district judge:

The indictment charges the defendant on two counts for executing and issuing two bonds, respectively, without the revenue stamp required by the act of June 13, 1898, one being a bond to the people of the State of Illinois, as demanded by statute for obtaining a license to keep a dramshop, and the other a bond to the city of Chicago, as required by ordinance of the city for like purpose. The contention on behalf of the defendant is twofold: (1) that the bonds in question are exempt under the terms of this act of Congress, and (2) if included within the terms of this act of Congress, the provision is unconstitutional in respect of such bonds as instrumentalities of the State and municipal government. I am of opinion that neither of these propositions is tenable.

1. For the first contention section 17 of the act is cited, but the exemption there provided relates exclusively to bonds and other instruments issued by the governmental authorities, and with the utmost liberality of construction are not applicable to bonds executed by individuals to the State or municipality for a license or other individual benefit.

2. If the bonds can be regarded as necessary means or "instrumentalities for the exercise of the functions of State or municipal government," as counsel insists, the second proposition is not without force. (*State ex rel Lahey v. Garton*, 13 Ind., 1; *Jones v. Estate of Keep*, 19 Wis., 369; *Sayles v. Davis*, 22 Wis., 225; *Fifield v. Close*, 15 Mich., 505.) But the business of saloon keeping is neither a governmental function nor essential to its administration, although good government may demand that the business be permitted only under regulations secured by bonds on the part of the applicant. The bond so exacted is a mere incident of the regulation. It is in no sense the act or obligation of the public or of a representative of the public, but is the applicant's individual undertaking to obtain a personal privilege, and as such is certainly not an immune in respect of stamp duties required of other citizens executing personal bonds or obligations. Neither the State nor its administration is affected directly or indirectly by the tax so imposed, as the bond must be executed and stamped when tendered; and if in

any view an instrumentality of the State, it becomes such only when fully executed.

The motion to quash the indictment is overruled, and an order will so enter.

(72.)

Stamp tax—Dramshop bonds.

Conflicting decisions in the United States district courts.—The Commissioner of Internal Revenue will not change his ruling until the question has been decided by a higher court.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 15, 1900.

SIR: Mr. E. A. Rozier, United States attorney, St. Louis, has furnished this office with a copy of the opinion rendered by Judge Adams in the United States district court in the case of *United States v. J. L. Owens*. This case involved the question whether the Government can require bonds given by a party making application for a license as saloon keeper to be stamped under the war-revenue act. The decision was against the United States. This is contrary to the opinion of Judge Seaman in the case of the *United States v. Ambrosini*, in which case the same question arose in the United States district court for the northern district of Illinois, which was published in TREASURY DECISIONS of February 15, 1900, internal-revenue decision No. 40.

In view of these conflicting decisions, the ruling of this office holding such bonds taxable will not be changed. The decision of United States District Judge Adams will not be accepted by this office until the question has been decided by a higher court.

You will continue to follow the ruling of this office, and insist that all such bonds shall be stamped by the principal at the rate of 50 cents each, and if in any case a fidelity or guaranty company becomes security on such bonds, additional stamps, at the rate of one-half of 1 cent on each dollar of the premium charged, are required. If the persons executing such bonds refuse to pay the tax by affixing the proper stamps, you will report them for assessment.

The parties can make a test question, if they desire, by instituting a suit against you for the recovery of the tax after the same has been paid and a claim for refund has been made in the manner provided by the statutes.

Respectfully, ROBT. WILLIAMS, JR., *Acting Commissioner.*
Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

BROKERS' CONTRACT AND NOTES.

(116.)

Stamp tax—Brokers' contracts.

Tax on brokers' contracts for the sale of real estate.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 1, 1900.

SIR: I have to acknowledge the receipt of your letter of the 20th ultimo, in which you submit copies of a contract used by real estate brokers in your district in negotiating sales of real property, and ask if the said instrument is taxable under Schedule A. The instrument is in the following form :

SAN FRANCISCO, ———.

Received of ———, ——— dollars, being deposit on account of ——— dollars, United States gold coin, the purchase price of the property this day sold to h— subject to the owner's approval, and being in the city and county of San Francisco, and State of California, and described as follows : ———.

Terms of sale: ——— days are allowed to examine title and consummate the sale. At the termination of said time the balance of said purchase money is due and payable upon tender of the deed of the property sold ; if the title is defective, sixty days are allowed to perfect the same, and if, after the expiration of said term, unless extended by mutual consent, the title shall not have been perfected, the deposit is to be returned. The taxes on said property for the fiscal year ending June 30, ———, to be prorated from date of deed, ———.

If the sale is not consummated according to the foregoing conditions, the deposit is to be forfeited. Time is the essence of this contract. The said ——— hereby agrees to purchase said property according to the foregoing terms.

Sale to be consummated at the office of ———.

_____,
_____,
Agents.

You are advised that the above document requires a 10-cent stamp under paragraph 14 of Schedule A, as a contract, or broker's note, or memorandum of sale of real estate.

The other instrument submitted (marked No. 2) is a copy of the above, except it has a blank on which the owner is to ratify the sale, and is to be retained by the broker. This blank No. 2 requires no stamp.

Respectfully,
Mr. JOHN C. LYNCH, *Collector Internal Revenue, San Francisco, Cal.*

G. W. WILSON, *Commissioner.*

(191.)

Stamp tax—Brokers' notes.

Clause 14 of Schedule A, act of June 13, 1898, relating to brokers' notes or memoranda of sale, construed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 31, 1900.

SIR: Referring to my letter to you of yesterday, relative to the liability of certain instruments to taxation as brokers' notes or memoranda of sale, I wish to add the following for your information and that of the Internal-Revenue Service generally:

With a desire to secure uniformity of practice among collectors and revenue agents in respect to the clause of Schedule A numbered 14, the following ruling is made for the guidance of all concerned. This clause is as follows:

Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this Act, ten cents.

The essential requirements of this clause are—

1. The note or memorandum of sale to be stamped thereunder must be issued by a broker or a person acting as such. No memoranda of any other class of persons are taxable under this clause.

2. All notes or memoranda of sales of shares of stock, and all memoranda of sales of merchandise at any exchange, or board of trade, or other similar place, are not taxable under this clause, being otherwise provided for, viz, in paragraphs 1 and 2 of Schedule A.

3. The note or memorandum must constitute a broker's contract of sale, either executed or executory, issued to a purchaser, and no mere advice or order for delivery of goods not delivered to the purchaser, nor statement of account, can be construed as a contract of sale.

4. The issue of the broker's note or memorandum of sale, as above defined, is not compulsory under this clause, but if it is issued it requires a 10-cent stamp, regardless of the amount involved in the sale.

Under clauses 1 and 2, herein referred to, the issue of some instrument evidencing the fact is compulsory, and the stamp tax is graduated according to the amount of the sale.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. RICHARD YATES, *Collector Eighth District, Springfield, Ill.*

CERTIFICATES.

(9.)

Stamp tax—Certificates.

Certificates attached to depositions to be used in legal proceedings not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

SIR: Under date of the 2d instant, this office received a letter from O. G. Eckstein, attorney-at-law, No. 107 South Main street, Wichita, Kans., in which this gentleman asks if notarial certificates attached to depositions of witnesses to be used in cases pending in court require to be stamped in the amount of 10 cents as certificates required by law not specifically mentioned in the act.

Please inform Mr. Eckstein that these certificates are not subject to taxation, no matter in what form they are executed. They are required in a legal proceeding and are exempt from taxation.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. M. W. SUTTON, *Collector Internal Revenue, Leavenworth, Kans.*

(23.)

Stamp tax—Commission certificates.

Nonnegotiable commission certificates used by thrashing-machine companies and the like are not subject to taxation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1900.

SIR: Referring to office letter addressed to you under date of December 22, 1899, which was in reply to a letter received from you under date of December 12, 1899, in which you submitted two forms of commission certificates issued by the Keating Implement and Machine Company, which were held by this office to be subject to taxation as orders for the payment of money, you are advised that this office, after further consideration, holds the so-called commission certificates not to be subject to taxation.

The following is a copy of one of the instruments submitted by you:

KEATING IMPLEMENT AND MACHINE COMPANY,
(WHOLESALE FARM MACHINERY AND VEHICLES),
Dallas, Tex., December 12, 1899.

This nonnegotiable, noninterest-bearing commission certificate evidences that there will be due to John Jones, on demand, after payment of note No. 44281, the sum of thirty dollars. Said note is made by Jim Davis, and matures October 1, 1900.

KEATING I. & M. Co.,
By Secretary or President.

The ruling contained in office letter addressed to you under date of December 22, 1899, is hereby revoked.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. P. D. HUNT, *Collector Internal Revenue, Dallas, Tex.*

(122.)

Stamp tax—Certificates of notaries to depositions.

A notary public, when engaged in taking depositions to be used as evidence before some judicial tribunal, being a judicial officer, the certificate authenticating his official acts as such officer is not within the internal-revenue act of June 13, 1898 (30 Stat., 455), Schedule A requiring a 10-cent stamp to be affixed on a "certificate of any description required by law not otherwise specified in this Act."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 11, 1900.

To collectors of internal revenue and others concerned:

The following extract from an opinion of the circuit court of appeals for the eighth judicial circuit, in the case of *Stirneman v. Smith et al.*, relating to stamps on notarial certificates, is published for the information of internal-revenue officers and others concerned.

G. W. WILSON, *Commissioner.*

CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

Stirneman v. Smith et al.

* * * * * *

A more important inquiry is whether, under Schedule A of the recent revenue act of June 13, 1898 (30 Stat., 455, 460, ch. 448), the notary before whom the depositions were taken was required to affix to his certificate a 10-cent revenue stamp. One clause of Schedule A requires a 10-cent stamp to be affixed on a "certificate of any description required by law not otherwise specified in this Act;" and notarial certificates, such as the one involved in the present case, are not referred to by any other provision of the act. Section 14 of said act declares "that hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law." * * * Section 15 of the act makes it unlawful "to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law," and further provides that "the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence." Section 17 of the act declares "that all bonds, debentures, or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power shall be, and hereby are, exempt from the stamp taxes required by this act: *Provided*, That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity." * * *

In the proviso last quoted is found an explicit declaration on the part of Congress that it was not its purpose to impose a stamp tax on any instruments or documents which might at any time be executed for or in behalf of a State, county, town, or other municipal corporation, to enable it to perform its ordinary governmental or municipal functions; and, if there had been no such a declaration, the same result would doubtless have been reached by judicial construction. In the absence of a definite expression on that subject, it would have been inferred, we think, that Congress intended to exempt from taxation all the instrumentalities that a State or any of its municipal subdivisions might find it expedient to employ in the discharge of their ordinary governmental functions, and that its purpose was to impose stamp taxes on those instruments only which have their origin in the private transactions of individuals and corporations, or to such instruments and writings as are executed mainly for their benefit, rather than for the benefit of the public. (*Carpenter v. Snelling*, 97 Mass., 452, 458; *Green v. Holway*, 101 Mass., 243; *Knox v. Rossi* (Nev.), 57 Pac., 179, and cases there cited.)

A notary public, when engaged in taking depositions to be used as evidence before some judicial tribunal, is a judicial officer, his duty being to assist the court under whose commission he acts in administering justice. While employed in such work a notary can not be regarded as the agent of the person or persons in whose behalf the testimony happens to be taken; but his duties are of an official nature, and in most respects analogous to those of a referee or an examiner or a master in chancery, whose functions are clearly judicial. Moreover, depositions which are taken before a notary or other inferior magistrate in a pending case are neither private papers nor private property, since they must be returned into court and lodged with the clerk, there to remain permanently as a part of the proceedings in the case.

We are of opinion, therefore, that the certificate of a notary, under his hand and seal, authenticating his official acts while serving in the capacity aforesaid, does not fall within the provisions of the recent internal-revenue act, but that such a certificate is exempt from taxation for the reason that while so engaged a notary is performing public duties devolved upon him by law, which are intimately connected with the administration of justice. The same conclusion was reached with respect to such certificates under the internal-revenue act of June 30, 1864. Schedule B of that act (13 Stat., 223, 299, ch. 173), after enumerating several kinds of certificates to which internal-revenue stamps should be affixed, further provided in general terms that an internal-revenue stamp of 5 cents should be affixed to a "certificate of any other description than those specified." It was held, however, that the general language employed in that act did not require a revenue stamp to be affixed to a notarial certificate authenticating depositions, because they were legal documents and constituted a part of a legal proceeding. (*Prather v. Pritchard*, 26 Ind., 65, 70. See, also, *Cardell v. Bridge*, 9 Allen, 355, 357.)

(219.)

Stamp tax—Certificates of indebtedness.

Taxation on certificates of indebtedness issued by mutual deposit or investment companies.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., September 28, 1900.

SIR: I have to acknowledge the receipt of your letter of the 14th instant, and in reply will instruct you as follows:

In regard to the taxation of the certificate issued by the Industrial Mutual Deposit Company, of Lexington, Ky., the ruling of this office has been, as to this and similar instruments, that they must bear stamps as certificates of indebtedness at the rate of 5 cents for each \$100 or fractional part thereof of the face value, and the face value is to be determined by ascertaining the highest possible value of the coupons attached to the certificates.

The terms of payment of these coupons are stated as follows in the conditions annexed to the certificate:

The company reserves the right to redeem said coupons, or any of them, at any time, in the manner provided for by the by-laws of said company and upon the payment of the amount hereinbefore promised, and *binds itself to redeem* all coupons within *one hundred and four weeks* upon which 104 weekly payments have been made.

The weekly payments are 5 cents for each coupon, and as each certificate bears 10 coupons, the weekly payment on each certificate is 50 cents, provided none of the coupons have been redeemed. In the body of the certificate is a promise and agreement on the part of the company to pay to the holder on the redemption of each of said coupons \$1.60 on every dollar paid to keep said coupons in force to the date of redemption, less 10 cents on each coupon when redeemed. There is a financial schedule attached to the certificate showing the value of each coupon at the end of each week, and at the end of one hundred and four weeks or two years, the period of ultimate redemption promised, the value is \$8.22 for each coupon. This is simply the amount of dues paid in on the coupon, viz, \$5.20, with 60 per cent added and less 10 cents, to be deducted at the time of redemption. The coupons at this rate amount to \$82.20, and make the taxation on this certificate, of course, 5 cents.

What this company is asking from this office is a ruling that the highest value of these coupons is \$4.06, the amount of the weekly payments for one year, adding 60 per cent and deducting 10 cents. This would enable the company to attach 24 coupons to the certificate at the same rate of taxation now paid.

This request is supported by the statement that the coupons have been redeemed by the company with such rapidity of late that the

average value of the coupons when redeemed was only 73 cents. The number of coupons redeemed was 39,707, none of which were over twelve weeks old, and this was nearly half of the coupons issued up to July 31, 1900.

In further support of this request, affidavits of officers of the company are filed with the collector, stating that in their "opinion and belief" no coupon issued by this company will ever reach an age exceeding fifty-two weeks, when its redemption value will be \$4.06.

It will be seen that this is a matter of opinion, and an opinion can not furnish a safe basis for computing taxes. The main fact is that the company is not bound to redeem these coupons until one hundred and four weeks have elapsed. It is true that it reserves the right, and exercises it, to redeem the coupons at a much earlier date, but its ability to do this depends upon the prompt payment of dues by all members and the acquisition of new members, so that money may pour into the treasury freely and abundantly.

In the not improbable contingency of financial depression, the redemption of coupons might be very much retarded. At any rate, in the opinion of this office, it is impossible to give any certain time of redemption other than that limited in the contract itself, which is one hundred and four weeks, with a value accruing of \$8.22 on each coupon, and this basis of taxation will be adhered to with respect to the certificates of the Industrial Mutual Deposit Company under its present contract. Neither will any change be made in this ruling if the company refrains from printing and attaching hereafter the financial schedule to the certificate, as it proposes to do. This schedule is a mere mathematical statement of the value of the coupons when redeemed at certain periods, and in no manner varies the terms of the contract or its legal obligations.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. S. J. ROBERTS, *Collector Internal Revenue, Lexington, Ky.*

(228.)

Stamp tax—Certificates of nomination.

Certificates of nomination and all papers relating to the exercise of elective franchise exempt from stamp tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 11, 1900.

SIR: I have to acknowledge the receipt of your letter of the 8th instant, in which you inquire whether a certificate of nomination for public office, such as is required by the laws of West Virginia, for electors and other officers, requires a revenue stamp.

In reply, you are advised that this office has always ruled that certificates of the nature described above, and all papers or instruments relating to the exercise of the elective franchise, are exempt from the stamp tax imposed by Schedule A of the war-revenue act, by section 17 of said act.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
MR. JAMES H. MILLER, *Charleston, W. Va.*

CHARTER PARTIES.

(25.)

Stamp tax—Charter party.

Where more than one vessel is chartered under one charter party, tax accrues on the basis of the net registered tonnage of each vessel.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 27, 1900.

SIR: This office is in receipt of your letter of January 20, 1900, in which you state that Deputy Collector Basch reports that while making an examination of the business of A. F. Churchill, ship broker at Savannah, Ga., he found two unstamped charter parties, which he did not cause to be stamped for the reason that there was a question as to the tax that was due on said instruments. The following are the facts with reference to said charters:

One of the charter parties provided that the steamship *St. Quentin* shall make four voyages from Savannah, Ga., to a port in Europe; that the steamship *St. Kilda* shall make four voyages, and the steamship *St. Ronald* shall make two voyages. Under the terms of the charter, it is optional with Mr. Churchill to require the vessels named to make the trips specified therein. The owners of the vessels simply bind themselves to make these trips if required. The *St. Quentin* has made two voyages, the *St. Kilda* has made two voyages, and the *St. Ronald* has made one voyage.

The other charter party was made August 31, 1899. It provides that the steamship *Winifred* and the steamship *Orewe* shall each make one voyage. The terms of this charter have been fully complied with. All of the steamships in question have a net registered capacity of more than 600 tons.

Mr. Basch was of the opinion that the charter party of July 26 should be stamped \$50 (\$10 for each voyage), and that when other voyages were made an additional stamp of \$10 in value should be placed upon the instrument; that the charter of August 31 should be stamped \$20 (\$10 for each vessel).

Mr. Churchill's position is that one stamp of \$10 is all that is required on each document, no matter how many vessels are provided for or

how many voyages each vessel is to make, or can make, under the terms of the instrument, and you request that this office instruct you in the matter.

You are advised that but one tax accrues upon a charter party for a single vessel, no matter how many voyages are therein contracted for said vessel to make. But if more than one vessel is contracted for under the same charter, tax accrues on the registered net tonnage of each vessel, separate and distinct from the other vessels contracted for in the same charter party. Therefore, the tax accruing on the charter party dated July 26 amounts to \$30, while in the case of the charter party dated August 31 the tax amounts to \$20.

Respectfully,
 Mr. D. A. GATES, *Revenue Agent, Atlanta, Ga.*

G. W. WILSON, *Commissioner.*

(118.)

Stamp tax—Charter parties.

Exemption of enrolled vessels plying between ports in the United States and those of Porto Rico.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 4, 1900.

SIR: I have to acknowledge the receipt of your letter of the 28th ultimo, written in behalf of the New York and Porto Rico Steamship Company, in reference to the tax on charter parties imposed by Schedule A of the act of June 13, 1898.

You say that the act of April 12, 1900, provides among other things—

That the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.

You state that you believe that this will entitle vessels of American registry plying between ports in the United States and those of Porto Rico to enrollment under Title L of the Revised Statutes of the United States, and you ask to be advised whether this Department will require the charters of such vessels to be stamped in accordance with the provisions of the act of 1898.

In reply, you are advised that the subject of the enrollment of vessels is not a question within the jurisdiction of this office, but if such vessels be enrolled, the charter parties will be exempt from tax under the principles announced August 3, 1898, in Treasury decision 19823.

Respectfully,
 Mr. JAMES H. HAYDEN, *Washington, D. C.*

G. W. WILSON, *Commissioner.*

**CHECKS, ORDERS FOR PAYMENT OF MONEY, NOTES, AND
CERTIFICATES OF DEPOSIT.**

(3.)

Stamp tax—Orders for payment of money.

Orders for the payment of money are required to be stamped, although intended merely as receipts or vouchers.—The drawer of the order is liable for the stamp, but, besides this, the maker, or party for whose use or benefit the order shall be made, signed, or issued, is liable also.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 30, 1899.

To collectors of internal revenue and others:

The appended decision of the United States circuit court, district of South Carolina, is published for the information of all concerned.

G. W. WILSON, *Commissioner.*

**THE UNITED STATES OF AMERICA—DISTRICT OF SOUTH CAROLINA—
IN THE CIRCUIT COURT, FOURTH CIRCUIT.**

Granby Mercantile Company v. E. A. Webster, as collector of internal revenue for the district of South Carolina.

The question presented in this case, lying as it does in a very narrow compass, is nevertheless important.

The Granby Mercantile Company had an understanding with the Granby Mills, whether put into formal contract or not does not appear. Under this contract or understanding the mercantile company sold goods to the operatives of the mills on credit. When the accounts for such sales were presented to the treasurer of the mills they were paid out of the moneys due to the operatives making them, for wages in the mills, the mercantile company guarantying the mills company the correctness of the several accounts. To protect itself and as vouchers for each transaction, the mercantile company at each sale took from the purchaser an order in this form:

COLUMBIA, S. C., _____

GRANBY COTTON MILLS pay to the Granby Mercantile Company
_____ dollars _____ cents, for my account.

Witness: _____.

The Granby Mercantile Company never presented these orders to the mills, but filed them away as vouchers, probably to be presented in case the maker disputed the account.

The collector of internal revenue, discovering this mode of dealing, called upon the Granby Mercantile Company to affix the 2-cent revenue stamp upon each of these orders. He insisted upon this demand, and the Commissioner of Internal Revenue, upon an appeal to him, sustained the decision of the collector. The mercantile company paid the demand, 2 cents upon 15,847 orders, in all \$316.94, and now brings suit for its repayment. (Section 3226, Revised Statutes of the United States.)

The collector proceeded under section 6 of the act of Congress approved June 13, 1898, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," passed in second session, Fifty-fifth Congress. The section is in these words:

"That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule."

Schedule A, referred to in this section, requires a stamp of 2 cents on "Bank check, draft, or certificate of deposit not drawing interest, or order for the payment of any sum of money, drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations at sight or on demand."

The collector requires a stamp upon instruments referred to in the case at bar because they are orders for the payment of money. There can be no doubt that they are orders for the payment of money and nothing else. The language used can have no other interpretation. The plaintiff, however, says that whatever may be their form, they were not intended for presentation, were never in fact presented but were taken, kept, and filed by the mercantile company as vouchers for each sale.

The case of *United States v. Isham* (17 Wall., 496) says:

"The liability of an instrument to a stamp, as well as the amount of such duty, is determined by the form and face of the instrument, and can not be affected by proof of facts outside the instrument itself."

And this rule commends itself. Were it necessary to inquire into all the circumstances attending the execution of an order for the payment of money, before it can be ascertained whether it be liable to the stamp tax, endless delay would be occasioned. The purpose of the tax—the prompt relief of the Treasury—would be defeated.

The important question, however, is this: Who is liable for the stamp? The drawer of the order unquestionably is. He comes within the words of the act, being the person "who makes, signs, or issues" the order. But, beside this, the payment must be made by the maker or by the party "for whose use or benefit the order shall be made, signed, or issued."

In the case at bar, "for whose use or benefit" were these orders made or signed or issued? The transaction is this: The operative makes the purchase. He can not, or does not desire to, pay cash. But the mercantile company is unwilling, or at least does not intend, to rely on the personal credit of the operative. It takes from him an order on the mills company payable out of the account of the operative with the mill company. That is the security which the mercantile company takes, and it is taken for its benefit. Whether it be presented then, or is kept for presentation at some time in the future if needed, or whether it be retained simply as a voucher, a verification of the account, it is taken for the use of the mercantile company. So that company comes within

the words of the statute. It can not be said that these words "or for whose use or benefit the same shall be made, signed, or issued," apply to the drawer of the order. If this were so, the words quoted would be entirely superfluous, mere surplusage, nor would the disjunctive "or" have been used to connect these words with the words preceding.

This seems conclusive of the question. Let an order be taken dismissing the complaint.

CHARLES H. SIMONTON, *Circuit Judge.*

December 27, 1899.

(24.)

Stamp tax—Orders for payment of money.

Receipts for insurance premiums, gas, water, telephone bills, and the like, when paid by banks and charged to depositors' accounts, must have a 2-cent stamp affixed thereto as orders for payment of money.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 25, 1900.

SIR: This office is in receipt of your letter of January 9, 1900, in which you refer to office letter addressed to you under date of December 21, 1899, relative to the exemption from tax of receipts for insurance premiums when presented to and paid by banks and charged to the accounts of depositors, and state that throughout your district insurance companies, gas companies, water companies, and, in fact, all institutions transacting business where dues or bills are collectible monthly, have adopted the plan, where their patrons do not object, of presenting the receipts or bills to the banks in which the patrons keep their accounts, where they are paid and charged to the patrons' accounts, and in view of the widespread use of this method you think that all such receipts or bills, when cashed by banks and charged to depositors' accounts, should be stamped as orders for the payment of money.

You are advised that in view of the widespread use of the method above referred to, this office hereby rules that receipts for insurance premiums, monthly gas, water, or telephone bills, and, in fact, all similar receipts or bills, when cashed by a bank and charged to depositors' accounts, must have affixed thereto a 2-cent stamp as orders for the payment of money. This applies not only when such bills or receipts are cashed by a bank at the request of a depositor, but also when cashed by a bank without any expressed authorization from the depositor, but with his implied authority, as shown by his acquiescence.

All former rulings contrary to the above are hereby revoked.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. JACOB E. HOUTZ, *Collector Internal Revenue, Omaha, Nebr.*

(36.)

Stamp tax—Rent notes.

When these notes pass from lessee to lessor in payment of rent, they are not taxable as leases; if payable in money, they are taxable as promissory notes; if payable in merchandise, no tax accrues.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 7, 1900.

SIR: I am in receipt of a letter, under date of January 27, 1900, from E. J. Ezell, president of the Okolona Banking Company, of Okolona, Miss. This gentleman states that there is a multiplicity of ideas as to the taxability of rent notes, and as this class of paper is handled largely by southern banks, he desires to be informed as to the proper taxation accruing upon such notes. I herewith set forth a copy of two of the said instruments, one payable in money and the other payable in merchandise:

No. 1.—On November 1, 1900, I promise to pay to the order of John Smith, one hundred and fifty dollars for the rent of seventy acres of land located in the SW. ¼ section 12, township 13, range 5, east in Chickasaw County, for the year 1900.

A. B.

No. 2.—On November 1, 1900, I promise to deliver to John Smith in Okolona, Miss., five bales of lint cotton, to average 500 pounds each in weight, being the rent for one hundred acres of land located in NE. ¼ section 6, township 7, range 4, in Chickasaw County, Miss.

C. D.

Instrument No. 1 is taxable as a promissory note, and the tax is based upon the amount of money expressed therein.

Instrument No. 2 is not taxable as a promissory note, because it is not paid in money. This disposes of these instruments in the promissory note feature.

It has been the ruling of this office previous to this letter that these instruments came within the purview of the following paragraph in Schedule A:

Lease, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof—

If for a period of time not exceeding one year, twenty-five cents.

If for a period of time exceeding one year and not exceeding three years, fifty cents.

If for a period exceeding three years, one dollar.

I have decided to reconsider this question in regard to their taxability under said paragraph, and to hold that when these instruments are signed by the party to whom the land is let and delivered to the party who lets the land they are not taxable under said paragraph. I am of the opinion that in order to impose a taxation on a document under said paragraph the document should be issued by the lessor or his agent.

Mr. Ezell submits copies of two other instruments as follows :

No. 3.—For and in consideration of the sum of three hundred dollars, to be paid by John Smith to me on November 1, 1900, and with a further understanding that the said John Smith is to clear up ten acres of wood land during the year named, I have this day rented to John Smith my entire farm in Chickasaw County for the year 1900.

A. B.

No. 4.—For and in consideration of four hundred dollars, to be paid to me by John Smith on November 1, 1900, and with a further agreement and understanding that the said John Smith is to erect a two-room upright building during the year named, I have this day rented to the said John Smith 300 acres of land in the farm known as the Stuart Place, in Chickasaw, for the year 1900. It is also herein agreed that Mr. Smith shall have the option of renting the above-named farm for the year 1901 for the sum of four hundred and fifty dollars, to be paid on November 1 of that year.

C. D.

From the face of these instruments, it will be seen that they pass from the lessor to the lessee. They are not notes, because the issuer of the instrument does not promise to pay, but he sets forth that "for and in consideration of a certain amount of money he rents to the party therein named certain real estate." Each of these instruments is subject to a tax; No. 3 is subject to a tax of 25 cents; No. 4 is a subject to a tax of 50 cents, because under it the lessee can acquire a term exceeding one year.

Will you please inform Mr. Ezell and all other interested parties of the contents of this letter.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. L. J. SOUER, *Collector Internal Revenue, New Orleans, La.*

(131.)

Stamp tax—Bank checks of court clerks.

Bank checks issued by clerks of the United States and State courts, by direction or authority of the court, are exempt from taxation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 19, 1900.

SIR: This office is in receipt of your letter of May 16, in which you ask to be informed whether or not checks issued by you as clerk of the circuit court are subject to taxation.

You are advised that bank checks issued by clerks of United States and State courts in their official capacity, and by direction or authority of the court, are exempt from taxation. All rulings to the contrary are hereby revoked.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. E. V. FITZPATRICK, *Clerk Circuit Court, Portland, Ind.*

(188.)

Stamp tax—Checks of referees and trustees in bankruptcy.

Checks of referees and trustees when given in pursuance of payments in bankruptcy proceedings are exempt from taxation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1900.

SIR: Replying to your letter of the 23d instant, I have to inform you that checks issued by a referee in bankruptcy, paying the costs of proceedings arising out of cases before a United States court in bankruptcy proceedings, are not subject to taxation; neither are the checks of trustees taxable when by them the funds in these cases are paid out. I have held that the checks of clerks of court, when issued pursuant to an order of court in the settlement of matters arising before the court, are exempt from taxation. (See TREASURY DECISIONS, internal-revenue ruling No. 131.)

A referee and trustee in bankruptcy are officers of the court, and when they disburse funds in these proceedings they occupy a somewhat similar position to a clerk of the court in regard to the matter of taxation, and for this reason the checks are not required to be stamped, being exempt under the provisions of section 17 of the act.

Respectfully,
G. W. WILSON, *Commissioner.*
Mr. RICHARD YATES, *Collector Eighth District, Springfield, Ill.*

(195.)

Stamp tax—Certificates of deposit.

Certificates of deposit drawn otherwise than at sight or on demand presumed to draw interest unless affirmative evidence to the contrary appears, and is taxable at the rate of 2 cents for each hundred dollars or fractional part thereof.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 8, 1900.

SIR: I have to acknowledge the receipt of your letter of the 1st instant, submitting a certificate of deposit in the following form for the opinion of this office as to its liability to taxation under Schedule A:

ILLINOIS TRUST AND SAVINGS BANK.

Countersigned: _____ <i>Teller.</i>	CHICAGO, _____ No. _____. _____ has deposited with us _____ dollars, payable to the order of _____, in current funds, on the _____ day of _____ upon the surrender of this certificate properly indorsed. <i>Not payable before maturity.</i> _____, <i>Cashier.</i>
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The above is a certificate of deposit payable at a definite time in the future, in which nothing is said about the payment of interest.

Paragraph 3 of Schedule A taxes a certificate of deposit not drawing interest issued at sight or on demand, 2 cents.

Paragraph 4 of Schedule A taxes a certificate of deposit drawing interest, payable otherwise than at sight or on demand, at the rate of 2 cents for each \$100 or fractional part thereof.

It is believed the lawmakers did not suppose that in ordinary commercial transactions prudent persons would place their money beyond their control for a definite time without compensation, and, therefore, did not provide for certificates of deposit issued on time without interest. There may be such cases, but they must be very rare and unusual.

A certificate of deposit for a definite time, as a rule, it is believed draws interest, and if interest is not mentioned in the certificate there always exists a contemporaneous agreement, either verbal or written, that interest shall be paid. The case cited by you where the depositor receives a certificate for an amount which embraces not only the money deposited but the interest to accrue on the same is a conspicuous instance of a contemporaneous agreement to pay interest, and such a certificate of deposit is taxable like any other certificate of deposit drawing interest.

It is further ruled that any certificate of deposit drawn otherwise than at sight or on demand will be presumed to draw interest unless the contrary clearly appears by affirmative evidence, and must pay a tax at the rate of 2 cents for each \$100 or fractional part thereof.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. JAMES C. HUTCHINS,

Counsel, Illinois Trust and Savings Bank, Chicago, Ill.

(199.)

Circulation tax—Bank checks.

Tax under section 3408, Revised Statutes, on the circulation, as money, of bank checks for a sum of \$1 or more.—It is made a criminal offense by section 3583, Revised Statutes, to circulate as money checks for a less sum than \$1.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., August 15, 1900.

SIR: In a letter addressed to this office on the 13th instant by Mr. C. S. Grayson, of Luray, Page County, Va., he incloses an ordinary bank check, duly stamped, and inquires whether or not it is "against the internal-revenue law to use checks like the inclosed in business." He has to-day been referred to you.

If, as is probably the case, the use of checks of this kind which he has in view is that of circulation in lieu of money, you will call his attention to the fact that tax is imposed upon such circulation by section 3408, Revised Statutes, and that section 3583, Revised Statutes, make it a criminal offense to issue checks "for a less sum than one dollar, intended to circulate as money, or to be received or used in lieu of lawful money of the United States."

Respectfully,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. PARK AGNEW, *Collector Sixth District, Alexandria, Va.*

(252.)

Stamp tax—Time drafts on Porto Rico.

Time drafts drawn on persons in the island of Porto Rico are taxable under the paragraph in Schedule A of the war-revenue act relating to bills of exchange, inland.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 3, 1900.

SIR: I have to acknowledge the receipt of your letter of the 23d ultimo, in which you state that the First National Bank of Brooklyn has requested you to advise them what tax accrues upon a ten days' sight draft drawn on a party in Porto Rico, whether under the requirements of the war-revenue act of June 13, 1898, this instrument should be regarded as a bill of exchange, inland, and stamped at the rate of 2 cents for each \$100 or fractional part thereof, or as a bill of exchange, foreign, and stamped at the rate of 4 cents for each \$100 or fractional part thereof.

In reply, you are advised that this office is of the opinion that Porto Rico is not a foreign country within the meaning of the paragraph in Schedule A of the war-revenue act relating to bills of exchange, foreign, and that a ten days' sight draft drawn in the city of Brooklyn on a person in the island of Porto Rico is not to be considered "as drawn in but payable out of the United States." This instrument should be stamped at the rate of 2 cents for each \$100 or fractional part thereof.

Respectfully, JAS. C. WHEELER, *Acting Commissioner.*
Mr. FRANK R. MOORE, *Collector First District, New York, N. Y.*

CONVEYANCES.

(50.)

Stamp tax—Partition deeds.

Deeds of partition executed by and between tenants in common, vesting title in severalty, are not taxable. If a grantee acquires an amount of real estate in excess of his share, the deed vesting title in him is taxable on a basis of the value of said excess amount.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 27, 1900.

SIR: Replying to your letter of the 16th instant, you are advised that the deeds of partition referred to by you are not subject to taxation. This is for the reason that the documents do not vest title; the title to the real estate was vested pursuant to a decree of a court. The decree, however, vested the entire 246 sections, as stated by you, in the four defendants mentioned. This decree is not taxable, and as title has been vested in these defendants, they now propose to segregate the real estate

so that each will hold in severalty his proportionate share in the real estate formerly held in common. The execution of these instruments does not vest in either one of the defendants any more than his proportionate share; they only serve the purpose of defining in severalty an interest formerly held in common. Therefore, no tax accrues on the document nor does any tax accrue upon the notarial acknowledgments.

If one of the grantees in any one of these conveyances should have vested in him more than his proportionate share, the document would as to that grantee vest title to an excess interest and in this instance should be stamped upon a basis of the value of said excess interest, but I do not understand that the latter is the case.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. LEON BLUM, *Galveston, Tex.*

(51.)

Stamp tax—Conveyances.

Decision of United States circuit court construing the clause in Schedule A, act of June 13, 1898, relative to stamps on conveyances.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., February 27, 1900.

The appended opinion of the circuit court of the United States for the western division of the western district of Missouri, relative to stamps on conveyances, is promulgated for the information of collectors of internal revenue and others concerned.

G. W. WILSON, *Commissioner*.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN
DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Julia Mastin v. Thomas H. Mastin.

Opinion by PHILIPS, district judge:

The receiver, Hugh C. Ward, heretofore appointed by the court in the above-entitled cause, on the final decree of the court winding up the administration of said estate, being required to execute a deed of release back to the above-named parties, has submitted to this court for its ruling the question as to whether or not under the internal-revenue laws of the United States he is required to place upon such deed of released revenue stamps; and, if so, to what extent. The provision of the revenue law is as follows:

“Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.”

Whatever may be said in respect to the controlling words in said section, it clearly enough applies alone to the instance of a sale and transfer of property to a purchaser between whom something of value invested in and belonging to the grantor passes to the grantee, whereby the grantee receives a benefit capable of estimation in money value. In this case, upon the petition of one of the partners, for the purpose of winding up the copartnership, the partnership estate was placed *in custodia legis*, and a receiver was appointed solely for the purpose of administration. By the decree of the court granting the injunction and appointing the receiver the copartners were required to place their title to the property in the receiver. This was merely for the purpose and convenience of judicial administration. No valuable consideration passed from the receiver to the grantors. Without such order of court, and without such conveyance, by operation of law, under the decree of the court, appointing the receiver, the right, title, and interest of the parties passed to, and vested in, the receiver, *pendente lite*, which would have enabled the receivers, under the order and direction of the court, to make sales and conveyances of the property. Such deeds by the receiver unquestionably would have required the requisite revenue stamp. The conveyances made by the parties to the receiver in compliance with the order of the court were essentially conveyances *in invitum* on the part of the grantors, and were essentially conveyances made by operation of law, solely for the better convenience and purposes of administration *pendente lite*. It is unlike the instance of a conveyance by the owner of property to a designated trustee to hold in trust for the security of a beneficiary, under which a deed terminating such trust and revesting the title "should be stamped according to the amount required on the trust deed that is released or terminated." But in the case under consideration the transfer of the title to the receiver was but supplemental and ancillary to the transfer by operation of law under the decree and was not made for the better security of any designated debt or claim. Therefore, on the final decree of the court, after the purposes of the judicial proceedings were accomplished, the court by its final decree could have decreed the title thus invested in the receiver back to the copartners, and the title would have reinvested by simple operation of the decree in them. In such case there could be no pretense that such reinvestiture constituted a conveyance within the meaning of the revenue law. The fact that the court in addition to the decree itself made the further provision or requirements that the receiver should remise and release to the parties this title taken *in custodia legis* ought not to produce a different result in so far as the revenue laws are concerned. In such case no consideration passes from the grantees to the grantor. The receiver receives nothing, and the grantees pay nothing. And in the judgment of the court it is not within either the letter or the spirit of said provision of the revenue law that such transfers come within the purview of sales and purchases contemplated by the act. In such case the receiver has no discretion but to obey the decree of the court. And as he is but the "right arm" of the court he but acts in the retransfer as the instrument of the court, and when the deed is executed the grantees but receive what in law and equity is their own, and it would be unconscionable to exact of either a tax upon such deed.

(52.)

Stamp tax—Conveyances of trustees.

Conveyances of realty to trustees or by trustees without valuable consideration not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 28, 1900.

SIR: This office is in receipt of a letter, under date of February 17, 1900, from C. F. A. Talbot, whose address is care of Laidlaw & Co., 14 Wall street, New York, N. Y., in which he asks if deeds made by a trustee under a situation stated as follows are taxable under the war-revenue act. The exact position is as follows:

Certain property left by will in trust to three trustees for benefit of children and others, with power to change the investments, and authority to fill vacancies in the trusteeship by appointments to be made by surviving or remaining trustee or trustees.

I, being the sole surviving trustee, propose to appoint another trustee to act in conjunction with myself in the management of the trust.

In making this appointment, it may be deemed advisable to make certain conveyances and assignments from myself to the newly appointed trustee, which may be placed on record, and which will show his authority to deal with the property of the trust estate, either in conjunction with myself or as sole trustee in case of my death or resignation.

There is no conveyance to or from a third person.

There is no sale, and no change of interest in the property, the transaction being merely the admission of a trustee to fill an existing vacancy, and to provide for the proper management and continuance of the trust in the same interests as heretofore.

You will please inform Mr. Talbot that this office now rules that the conveyance of real estate without valuable consideration to a trustee, or by a trustee to another trustee, or by a trustee to a *cestui que trust*, requires no stamp tax under the internal-revenue laws.

This ruling is in accordance with the reasoning of Judge Philips, as understood by this office, in a recent decision rendered by him in the circuit court of the United States for the western division of the western district of Missouri.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. CHAS. H. TREAT, *Collector Internal Revenue, New York, N. Y.*

(53.)

Stamps on conveyances.

Decision rendered by Judge Stake, of the fourth judicial circuit of Maryland.—Effect of failure to stamp an assignment of a mortgage.—Subsequent stamping has no retro-active effect in imparting validity.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1900.

The appended opinion of the circuit court of the fourth judicial district of Maryland, relative to the stamping of conveyances, is promulgated for the information of collectors of internal revenue and others concerned.

G. W. WILSON, *Commissioner.*

STATEMENT OF THE CASE.

On the 6th day of March, 1880, Henry Hartle executed a mortgage of certain lands to Benjamin South to secure the payment of the sum of \$5,500. This mortgage contained a power of sale to the mortgagee in default of payment. On the 17th day of September, 1889, the administrators of the mortgagee assigned the mortgage to George W. Smith, jr., and Josephus Ground, who subsequently, on the 14th day of October, 1898, assigned it to Lewis J. Ground. On the 14th day of November, 1899, Geo. W. Smith, jr., Josephus Ground, and Lewis J. Ground all joined in an assignment and transfer of the mortgage to Henry F. Wingert. Default having been made in the payment of the money, Mr. Wingert, in the execution of the power of sale contained in the mortgage, offered the property at public sale on the 12th day of December, 1899, and sold it to Mrs. Laura K. Zeigler for a sum amounting to \$10,556. The purchaser now comes into court and excepts to the ratification of the sale upon the ground that at the time the sale was made there was not a United States internal-revenue stamp on the assignment of November 14, 1899, from Smith and Ground to Wingert.

[Extract from decision of Hon. Edward Stake, associate judge of circuit court, Maryland.]

* * * * *

Sections 14 and 15 of the war-revenue act of Congress of June 13, 1898, are as follows :

"Sec. 14. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law. * * *

"Sec. 15. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law ; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence."

Subsequently on the 12th day of January, 1900, the proper amount of United States internal-revenue stamps was affixed by the collector of internal revenue under the provisions of the above-recited section. (Section 13.)

The question presented is, what is the qualifying effect of the inadmissibility of the transfer of assignment in evidence upon the sale of

December 12, 1899. The absence of any adjudications as to the effect of the war-revenue act of June 13, 1898, makes this a new question for determination. The law does not necessarily consist of precedents or adjudged cases, but of the principles which run through the cases, which, when properly applied, produce a legal consequence to the facts of the controversy. (See Judge Buchanan in *State v. Buchanan*, 5 H. & J., 317, and Judge Magruder in *State v. Smith*, 6 Gill, 428.)

* * * * *

The principle that I understand to be well established in this State is that every statute is to be construed as prospective in its operation unless the intention of the legislature that it shall be retroactive is clearly expressed in it. (*Baugh v. Nelson*, 9 Gill, 303; *State v. Norwood*, 12 Md., 206; *Clark v. Mayor*, etc., 29 Md., 283; *Davis v. Claibagh*, 30 Md., 508; *Herbert v. Gray*, 38 Md., 529; *Williar v. Baltimore Butchers' Loan and Annuity Association*, 45 Md., 555.)

No such retroactive intention is either expressed or can be implied from the language of the act of Congress of June 13, 1898. In fact such a provision would tend to a great extent to destroy its effectiveness as a revenue measure. The clear purpose of the act of Congress is to take away from transfers and assignments any probative character and to render them of no legal validity until they are subsequently stamped in compliance with the provision of the act. The subsequent stamping is to be taken as imparting legal validity only from that point of time. To judicially legislate into this provision a retroactive effect would be to make the act of transfer effective from the beginning without regard to the restriction of the act of Congress, and invite a disregard of the stamp duties by withholding the stamp tax until some future emergency should arise for exhibiting the transfer.

My attention has been directed to several decisions of courts of last resort, notably in New York, Massachusetts, and Michigan, in construing the stamp acts of Congress of 1863 and 1864, in which the provisions of these acts disqualifying unstamped papers as evidence were ignored. An examination of the stamp acts of 1863 and 1864 shows quite a difference in this respect from the act of June 13, 1898. In the former acts the objection to unstamped paper as evidence was subject to the qualification "that the omission of the stamp was with the intention to defraud the revenue." (*Carson v. Phelps*, 40 Md., 96.) It might also be added that at the time these decisions were made the paramount authority of the Constitution of the United States and the laws made in pursuance thereof was not clearly determined or admitted. Thirty years have passed since these decisions were made, and with the present state of the law on this subject, as adjudged by both Federal and State courts, it is not likely that the power of Congress to legislate on this subject would now be questioned in any court.

No question was made at the hearing as to the right of the purchaser to intervene and seek a rescission of the sale, nor do I understand that her right to do so is denied. A court of equity will not compel a purchaser to take a title which is not free from reasonable doubt and might in reasonable probability expose him to the hazard of litigation. (*Emmert v. Stouffer*, 64 Md., 554; *Lurman & Fowler v. Hubner*, 75 Md., 268; *Huntner & Walter*, 30 Md., 60; *Connaughton v. Bernard*, 84 Md., 577; *Freeman on Void Judicial Sales*, sec. 48.)

For the reasons above stated, the exceptions of the purchaser to the ratification of the sale will be sustained, and I will sign an order to this effect.

(66.)

Ruling as to stamp tax on conveyances of real property under Schedule A of the act of June 13, 1898.

[Int. Rev. Circular No. 555.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 9, 1900.

To collectors of internal revenue and others:

The paragraph of Schedule A relating to the stamp tax on conveyances of real property is in the following language:

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.

In construing the above provision, it is now held that it is only upon conveyances of "realty sold" that conveyance stamps are required—*i. e.*, upon conveyances of realty where a valuable consideration, a benefit capable of estimation in money value, either passes, or has passed, or is to pass, from the grantee to the grantor.

The word *sold*, as employed in the statute, is used, in my opinion, not, as heretofore ruled by this office, in the technical sense of "purchase and sale" as contradistinguished from the taking by descent or operation of law, but in its ordinary meaning and acceptation.

The previous ruling upon this question, which is hereby reversed, was made under the advice of the honorable Attorney-General. I am in doubt concerning its correctness, and have decided henceforth to give the benefit of the doubt to the taxpayer. Inasmuch, however, as the former ruling may nevertheless be the correct one, taxes heretofore paid in compliance with it will not be refunded.

G. W. WILSON, *Commissioner.*

(67.)

Stamp tax—Conveyances.

No tax on conveyances of realty by executors to trustee without valuable consideration.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 9, 1900.

SIR: I have to acknowledge the receipt of your letter of the 6th instant, with respect to a decision in the matter of taxing a deed of trust from the executors of the late Bishop McGovern to yourself as trustee.

In reply, you are advised that after the most careful consideration of the question, I am of the opinion that said deed comes within the scope

of my ruling of the 28th ultimo, that the conveyance of real estate without valuable consideration to a trustee, or by a trustee to another trustee, or by a trustee to a *cestui que trust*, requires no stamp tax under the internal-revenue laws.

I am satisfied that the conveyance of property by the above-named deed was wholly without valuable consideration, and the real estate mentioned therein remained in the ownership of the same diocese or congregations during all changes of legal title, and that it requires no stamps. The ruling to the contrary made by this office under date of September 5, 1899, to Collector Hershey, of the ninth district of Pennsylvania (T. D. 21583), is hereby revoked.

Said conveyance can be recorded without any internal-revenue stamps affixed thereto, and you are authorized to exhibit this letter to any recorder for the purpose of having said conveyance duly recorded.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Right Rev. J. H. SHANAHAN, *Harrisburg, Pa.*

(75.)

Stamp tax—Timber deeds.

When instruments convey standing or cut timber they are not taxable as conveyances.

If under them the grantee acquires the use of the real estate for the purpose of erecting sawmills, etc., the document is taxable under the paragraph in Schedule A relating to leases, etc.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 16, 1900.

SIR: I am in receipt of your letter of the 9th instant, in which you inclose articles of agreement relating to the sale of timber; and you ask if this document is subject to taxation.

In reply, you are advised that the instrument is not a conveyance within the meaning of the act. Under it certain classes of timber are sold, either standing or cut, but this is not sufficient to tax the document under the paragraph relating to conveyances. Under this document the grantee acquires the right to the use of the land on which the timber stands. This use is one that enables him to erect sawmills, to cut the timber down, to saw, manufacture, and carry it away; in other words, he has the use of the real estate until he has removed the timber. The document is, therefore, taxable under the paragraph in Schedule A reading as follows:

Lease, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof—

If for a period of time not exceeding one year, twenty-five cents.
If for a period of time exceeding one year and not exceeding three years, fifty cents.

If for a period exceeding three years, one dollar.

You are requested to advise all inquirers as above.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
Mr. H. L. HERSHEY, *Collector Ninth District, Lancaster, Pa.*

(85.)

Stamp tax—Deed for levy and sale in Georgia.

Deeds of conveyances in Georgia executed under the provisions of section 1970 of the Georgia Code of 1882 are not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 30, 1900.

SIR: I am in receipt of a letter under date of the 24th instant, from O. A. Coleman, treasurer of the Georgia Loan and Trust Company, of Macon, Ga., in which he submits what is called an escrow deed for the purpose of levy, executed pursuant to section 1970 of the Georgia Code of 1882. He asks if this document is subject to taxation.

In reply, you will please advise him that previous to the ruling made by this office and contained in Circular No. 555 it was held that these instruments were subject to taxation. Under the ruling contained in the circular I am of the opinion that these instruments are not subject to taxation. No such valuable consideration passes for the documents as is contemplated by the ruling contained in said circular. It is understood by this office that the instrument submitted is executed under the following circumstances:

A borrows money from B evidenced by a note, and to secure said note he executes a deed conveying the real estate pledged to secure the payment of the note to B. B executes a bond to reconvey the real estate to A if no default is made in the payment of the indebtedness. A does, however, make default. B secures against him a judgment, and for the purpose of levy and sale on said judgment he is required by the code provisions herein referred to to reconvey the property to A in order that title may be in him for the purpose of a valid levy and sale.

It is this latter deed that is submitted, and I hold that it is not subject to taxation under the ruling contained in Circular No. 555.

Respectfully,
G. W. WILSON, *Commissioner.*
MR. HENRY A. RUCKER, *Collector Internal Revenue, Atlanta, Ga.*

(164.)

Stamps on conveyances.

The action of collector in stamping the instrument under section 13, act of June 13, 1898, cures the defect and operates retroactively.—Decision of the court of appeals of Maryland, overruling decision of Judge Stake published in TREASURY DECISIONS, internal revenue, No. 53, March 1, 1900.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 27, 1900.

The appended opinion of the court of appeals of Maryland, relative to stamps on conveyances, is promulgated for the information of all concerned.

G. W. WILSON, *Commissioner.*

COURT OF APPEALS OF MARYLAND.—APRIL TERM, 1900.

Henry F. Wingert, Assignee, v. Laura K. Ziegler.

Appeal from the circuit court for Washington County—Equity.

BOYD, J.:

On November 14, 1899, a mortgage was assigned to the appellant, Henry F. Wingert, who advertised the property, under a power of sale contained in the mortgage, and on December 12, 1899, sold it to Laura K. Ziegler, the appellee.

The sale was duly reported to the circuit court for Washington County, and exceptions were filed by the purchaser on the ground that at the time of the sale the assignment of the mortgage was not stamped, as required by the United States revenue laws. On January 12, 1900, the collector of internal revenue for the district of Maryland certified that satisfactory evidence having been furnished him that the failure to affix and cancel stamps to denote the tax due at the time of the assignment was owing to inadvertence and was not willful, stamps of the proper value had been affixed and canceled by him, which certificate was noted on the original record by the clerk. The court below set the sale aside, and from that action this appeal was taken.

A question of importance and one concerning which the courts differed in passing on former internal-revenue laws of the United States, was referred to at the argument—that is, how far Congress has the power to declare invalid transfers of property, made in accordance with State laws, by reason of the fact that the instruments used in making such transfers were not stamped as required by the revenue laws of the United States. That has never been determined by this court and we do not deem it necessary to do so now, but we only refer to it in order that it may not be understood by what we hereinafter say in reference to the statute before us as intending to concede that such power is vested in Congress under the Constitution of the United States. It will be time enough to pass on it when it becomes necessary, if that shall ever occur, and we do not now mean to intimate any opinion on the subject.

Section 13 of the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," provides "that any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court; and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect," etc. This is followed by some important provisions for the correction of failure to stamp, which will be referred to later on in this opinion, and will not now be stated.

Schedule A includes assignments of mortgages, and, as we have seen, this assignment was duly stamped by the collector within twelve months, and his certificate was recorded by the clerk. None of the facts are disputed, and the only question, therefore, to be determined is whether the subsequent action of the collector in stamping the assignment so corrected the effect of the omission to stamp it when

made as to entitle the holder of the mortgage to have the sale ratified. No other objection to the validity of the sale is suggested, and it is not shown, or even claimed, that the fact that the assignment was not originally stamped in any way affected the price which the property brought, indeed that could not well have been attempted, as no one but the purchaser has objected to the sale. Nor is it suggested that the rights of any other person have in any way intervened and the real purpose of our inquiry must be whether the appellee would, by the ratification of this sale, acquire such title as she would have had if the assignment had been duly stamped when made.

In order to ascertain the scope of the act and the effect of the failure to stamp an instrument included in it, such as the one before us, it will be necessary to examine carefully and somewhat critically the provisions of the statute. The only language used in it which in terms might seem to indicate the intention of Congress to wholly invalidate an instrument not stamped as required is the concluding clause of the portion of section 13 quoted above, which, after providing for the penalty, says, "and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect."

That language of itself is undoubtedly open to the construction that it was intended by Congress to declare an instrument embraced by the law invalid and of no effect unless it is stamped—at least until it is properly stamped—but in the connection in which it is used there is another interpretation which can readily be given it, which is far more consonant with justice and the evident purpose of the law. It says "such" instrument, etc., and when we look to see what "such" refers to, we find it is an instrument that the person whose duty it was to stamp it has left unstamped "with intent to evade the provisions of this Act."

It is scarcely possible that Congress intended that one who deliberately and intentionally violated the law might escape by paying "a fine not exceeding fifty dollars," while one who was perfectly innocent of so doing should have his title deed or other valuable paper declared invalid and of no effect. Under the statute it is the duty of the grantor in the deed, or the party issuing, selling, or transferring the instrument, document, or other paper to affix the stamp, and, if the construction contended for be followed, a designing grantor, taking the chances of a prosecution, might impose on an innocent purchaser whose title would be worthless, although he was absolutely free from any suspicion of wrongdoing or intention of evading the law.

We can not reach the conclusion that such was the intention of Congress when we find the law itself to be so suggestive of the other interpretation. In *Green v. Holway* (101 Mass., 243), Justice Gray reviewed the various acts of Congress on this subject, and cited authorities to show that the provision "and such instrument, document or paper shall be deemed invalid and of no effect," required a conference to the previous provisions in the section, to ascertain the meaning of the word "such," holding that it only applied to those on which stamps had been omitted with intent to evade the provisions of the law.

The agreement sued on in that case was executed after the act of 1866 took effect, which used the same language as that in the act of 1898: "And such instrument, document, or paper, *not being stamped according to law*, shall be deemed invalid and of no effect." The court considered

the effect of the insertion of the words "*not being stamped according to law*" and held that it did not change the meaning of the provision embodied in previous laws, when taken in connection with other provisions. In *Moore v. Quirk* (105 Mass., 49), that case was expressly affirmed. In *Black v. Woodrow* (39 Md., 194), this court held that an instrument subject to the act of 1866 was not void or inadmissible in evidence, if the omission to stamp it was without intent to evade the provisions of the act.

Many other authorities might be cited, including decisions of the Supreme Court of the United States, to show that in regard to some of the earlier acts of Congress such was the interpretation, and we think this provision in the present law should be so construed, and that it was intended to apply only to those cases where the stamp was omitted to evade the provisions of the law.

But if it had been conceded that the law should be construed to declare any instrument invalid and of no effect so long as it is not stamped, although omitted innocently, there are other provisions in the statute which conclusively show that when one is stamped, under such circumstances as this assignment was, the error is corrected, and, excepting as to the rights of others acquired in good faith before such subsequent stamping, the instrument is to be treated as if it had been originally stamped according to law.

Section 13, after stating what we have quoted above, provides that in all cases when the stamp is not affixed on certain instruments mentioned, any party having an interest therein can appear before the collector, who shall upon payment of the price of the proper stamp and of the penalties prescribed, affix the stamp "*and the same shall thereupon be deemed and held to be as valid to all intents and purposes as if stamped when made or issued.*"

It then further provides that when it shall appear to the collector, to his satisfaction, that an instrument was not duly stamped "by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof," then, if the instrument, or a properly proven copy thereof, "shall within twelve calendar months after the making or issuing thereof," be taken to the collector and the stamp tax paid, he can remit the penalty and cause the instrument to be stamped. And when it is so stamped the officer having charge of the record is authorized to make a new record thereof "*or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law,*" thus conclusively showing that it was not intended to make the record of every unstamped instrument null and void, for, if it was, the act would unquestionably have required a new record and would not have authorized the correction of the original one, made contrary to law. But it does not stop there, for it adds "*and the original instrument, or such certified copy or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped.*"

If Congress had intended to give it effect only from the time it was legally stamped, surely such language would not have been used as that just quoted, for it would have been clearer and simpler to have said that it should only be valid from and after the time it was so stamped, if such was the intention. If that had been done it might in some cases have worked great injustice. For example, under our State law a mortgage must be recorded within six months from its date, unless authorized by an order of the court to be recorded after that time.

If more than six months after one is recorded it is ascertained that, through some mistake or inadvertence, it was not properly stamped and the mortgagee then complies with the provisions of section 18, has it stamped by the collector within twelve months, and that fact noted on the original record by the clerk, must it be said that the original record was invalid because the mortgage was not then stamped?

If so, then, although the United States has been satisfied and the laws of the State complied with, the mortgagee can have no benefit of the mortgage without the aid of a court of equity, and then only under the conditions prescribed by section 33 of article 16 of the Code. We do not think such a construction of the statute necessary to enable the Government to enforce collection of the tax, or within the intention of Congress, as gathered from the law itself. It may well happen that an honest mistake may be made—especially by laymen—as to what tax is required. The courts of this country differed widely as to some of the requirements of the former revenue laws, and doubtless there will be differences as to the present law between judges, lawyers, and officers of the Government whose duty it is to enforce it.

But there is still another provision in this section which greatly strengthens the contention of the appellant, and that is the last one. After providing for methods of correcting the omission to stamp instruments, etc., this section concludes: "But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid." It is difficult to understand why Congress should have inserted that saving clause if it did not intend that the subsequent stamping should have a retroactive effect.

If the law means that the instrument only becomes valid and operative *from* and *after* the time it is stamped, what possible use was there in making the reservation in favor of rights acquired *before* stamping? Was it not manifestly inserted because Congress understood that the previous provisions of the section might give such effect to an instrument, subsequently stamped, as it would have had if originally stamped, even against the rights acquired in good faith, unless that reservation was inserted?

It may be well to add that sections 14 and 15 of the act of 1898 do not strengthen the appellee's contention, but, if they affect it at all, rather weaken it. They do not contain provisions that are new to the internal-revenue laws.

The first part of section 3431 of the United States Revised Statutes (1875) virtually corresponds with section 14, and it includes the provision of section 15, prohibiting the recording of instruments, etc., unless they are stamped, but there is this marked difference between them. The law as codified in that section (3421) provided that the record of an instrument not properly stamped "shall be *utterly void* and shall not be used in evidence," while section 15 of the present law only says it "shall not be used in evidence," the inference being that the change was made purposely to exclude the provision as to its being void. This statute, it is true, prohibits the record of an instrument not properly stamped, and anyone violating it is liable to the penalty imposed, but it does not in terms make a record void, and we do not think that the intention to do so can be gathered from it.

It is said, however, on behalf of the appellee, that it is not contended that the instrument is absolutely void, but that the statute prohibits the use of it until it is stamped, and hence that, inasmuch as this assignment was not stamped until after the sale, it was of no effect, and the

appellant was without authority to sell under the power in the mortgage when the sale was made. But that argument avoids the main question in the case and proceeds on the theory that the instrument is of no use excepting from the time it is stamped, and has no retroactive effect.

When the sale was ready for ratification and the court was called upon to act upon it there was no legal obstacle in the way of using the assignment in evidence to ascertain the authority of the appellant to sell. Independent of the act of Congress, the authority was vested in him when he made the sale, as he had complied with the requirements of the laws of this State; and, under the act, he had done what by its very terms enabled him to use it in the court below, "*in the same manner and with like effect*," as if it had been originally stamped—that is, as if it had been stamped when made—subject only to the qualification that no right had been acquired in good faith before the stamping.

It is not pretended that any such right had been acquired, hence we must give the assignment the "like effect" it would have had if it had been stamped when made. We have in this State many instances of similar legislation in what are called "curative statutes" to correct errors in deeds, mortgages, etc., defectively executed or acknowledged. Without multiplying examples, see sections 78 to 82, inclusive, of article 21 of the Code for a number of them. They save the rights of third parties which have been acquired in good faith, and the power to pass such laws has been sustained over and over again by this court and its predecessors.

The principal difference between that class of legislation and this act of Congress is that the latter authorizes the defect to be cured by the same statute that creates the disability, if the methods prescribed for that purpose are pursued, while the former corrects the error by subsequent statutes.

We are of the opinion, then, that the record of this assignment of the mortgage was not void by reason of not being stamped, but at most was only prohibited from being used in evidence before it was stamped, and when that was done by the collector, upon being satisfied that the stamp was omitted through inadvertence and not wilfully, and the clerk noted that fact upon the original record as authorized by the act, the right to use the assignment, as if it had been stamped when it should have been, was restored and related back to the time it was made, subject only to any rights in it or the property secured by the mortgage bona fide acquired in the meantime.

Inasmuch as no such rights are alleged to have been so acquired, we will not discuss the effect and extent of that provision beyond what we have said. Although the cases which were decided by this court under previous laws are not wholly applicable, several of them do reflect upon the retroactive effect of such subsequent stamping. In *Cooke v. England* (27 Md., 14), the suit was brought on an agreement which was not stamped until the day of trial—over two years after it was made. The court held that its validity was restored by payment of the penalty and stamp tax, and it was admissible in evidence, although not stamped until after the suit was brought.

In *Carson v. Phelps* (40 Md., 73), Carson, on April 27, 1868, executed a deed purporting to convey to himself, as trustee, some lots of ground in trust for the purposes therein named, but did not stamp it. He died insolvent in May, 1869, and a creditors' bill was filed against the property included in the deed of trust, and the parties interested in that deed paid the stamp tax and penalty to the collector on July 11, 1870.

This court held that the defect of a want of stamp had been supplied

by the affixing of the stamp and the payment of the penalty to the collector, and the deed was sustained as a priority over the general creditors, who were such prior to its execution.

Other cases might be cited to show that the result of many decisions has been to give the subsequent stamping of instruments under the United States revenue laws a retroactive effect, but we will not prolong this opinion by doing so. The decree of the court below will be reversed, and the cause remanded in order that the sale may be ratified.

Decree reversed and cause remanded, the appellee to pay the costs.

(172.)

Stamp tax—Deeds of conveyance.

Explanation of the ruling made in Circular No. 555 respecting the tax accruing on deeds of conveyance.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 3, 1900.

SIR: I have to acknowledge the receipt of your letter of the 28th ultimo, in which you state that you are in doubt as to the position of this office in regard to the taxation on conveyances representing realty sold. You refer to the ruling made by this office which is contained in Circular No. 555, and you ask if under this ruling you are to understand that conveyances made by a husband to a wife as a gift are not taxable, or where a conveyance is made by a party as a gift to a benevolent institution, in each of which the consideration is \$1.

In reply, you are informed that such deeds are not taxable. If, however, a party sells real estate to another party or exchanges real estate, or passes title to real estate for a valuable consideration and the deed of conveyance has expressed therein a consideration of \$1, the instrument is taxable. The taxability of such an instrument is not always to be found from the expressed consideration, because in a number of instances where persons sell real estate the conveyance contains but a nominal consideration of \$1. The expression of such a consideration would not exempt the deed of conveyance from taxation. The determining factor in all cases is, Does a valuable consideration pass, as expressed in Circular No. 555? If it does, the document is taxable, and should be stamped accordingly; but in all cases of gift or the change of trustees or the curing of defects in description by correction deeds and other similar cases no taxation accrues, because no valuable consideration is involved in the transaction.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
MR. GEO. M. VON BONNHORST,
Recorder of Allegheny County, Pittsburg, Pa.

(196.)

Stamp tax—Deeds of conveyance, mortgages, etc., executed prior to July 1, 1898, and recorded subsequent to that time.

Deeds of conveyance, mortgages, and assignments of mortgages, executed and delivered prior to July 1, 1898, and not presented for record until subsequent to that time, are not taxable.—Attention called to the tax on these instruments when issued between September 1, 1862, and October 1, 1872, and the recordation of these documents when not stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 9, 1900.

SIR: Under date of the 31st ultimo, I received a letter from C. C. McDonough, register of deeds, at Wabasha, Minn., in which he incloses a letter from you written to him under date of the 30th ultimo, in which you call this gentleman's attention to the ruling of this office which states that a deed or mortgage executed and delivered prior to July 1, 1898, is subject to the stamp tax when offered for registration after that date in States where the State law requires registration as necessary to pass title or establish a valid lien.

Mr. McDonough has had presented to him for registration a mortgage and an assignment of the same executed and delivered prior to the passage of the war-revenue act, and he desires to know whether or not these instruments are subject to the stamp tax.

In reference to this question, I have to inform you that the Attorney-General, shortly after the passage of the war-revenue act, rendered an opinion in respect to the tax accruing on mortgages executed and delivered prior to July 1, 1898, but not recorded until subsequent to that date, holding them taxable. This opinion has been adhered to by this office when deeds and mortgages were delivered in States wherein registration was necessary in order to pass title between the parties or to establish a valid lien as between the mortgagor and mortgagee.

The correspondence of this office reveals the fact that there are comparatively few States in which registration is necessary to the validity of a conveyance or mortgage as between the parties, and in these few States it appears the statute requirements are such that the instruments, if recorded within a certain period after their delivery, are as valid as if recorded immediately. It is therefore believed that a more equitable construction of the law will be one holding that a deed or mortgage executed and delivered prior to July 1, 1898, when Schedule A of the war-revenue act took effect, would not be subject to taxation when recorded subsequent to that date, and it is therefore held that in no State will a tax accrue on a deed of conveyance or mortgage or an assignment of a mortgage executed and delivered prior to that time, regardless of when it is presented for record.

It should be understood that the ruling herein made has no application to the above-mentioned instruments when they were executed and

delivered between September 1, 1862, and October 1, 1872, for within that period the former stamp-tax act imposed a taxation on this class of documents, and if within that period such documents were issued without being stamped they were subject to the tax and provisions of the act of July 1, 1862, which, as to these instruments, went into effect September 1, 1862, and the repeal of which was effective October 1, 1872, and such instruments should not be recorded until the requirements of that act have been complied with. * * *

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. FRED VON BAUMBACH,

Collector Internal Revenue, St. Paul, Minn.

(200.)

Stamp tax—Ground-rent deeds.

Form of deed used in Maryland in ground-rent conveyancing taxable as a lease.—Ruling in Treasury decision 21537 revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 16, 1900.

SIR: On August 23, 1899, there was rendered to you by this office an opinion in reference to the taxation accruing upon a form of deed used in the city of Baltimore in conveying a certain estate under the ground-rent system that prevails in your city. The opinion of this office as to its taxability appears in Treasury decision 21537, and it was held that this document was taxable under the paragraph in Schedule A relating to conveyances.

This subject has again been brought to the attention of this office under date of August 7, 1900, by Mr. J. W. Marshall, second vice-president of the Safe Deposit and Trust Company, of Baltimore, setting forth the conditions attending conveyancing in the city of Baltimore under the ground-rent system. This letter of August 7 supplements a personal interview with Mr. Marshall, in which the conveyances under this system were thoroughly explained by him and the application of the internal-revenue laws in the matter of the taxation of the same discussed.

At the time of rendering the opinion of August 23, 1899 (T. D. 21537), a complete statement of facts and law was not before me, and for that reason, and owing to the importance of the subject, the opinion was confined to the instrument passed upon.

In the interview with Mr. Marshall the fact was developed that the whole matter had not been presented and that the opinion rendered in the Treasury decision herein quoted was not applicable to the situation or to the document passed upon. Upon a reconsideration of the subject, I have to inform you that I am of the opinion that the deed set forth in

Treasury decision 21537 is taxable as an assignment of a lease and not as a deed of conveyance.

You will notice in the former opinion that it is stated in passing upon the document that it is presumed to be a conveyance of an unexpired term created by a previously executed instrument. At the time of the rendering of the opinion there was no evidence submitted as to the character of the instrument creating the estate which was affected by the deed passed upon. Mr. Marshall submits a copy of this document. Under it an estate of leasehold is created with conditions permitting the lessor to make a distress whenever rent shall be in arrear in whole or in part, and also to reenter upon the premises demised and hold the same as if the lease had never been made if the rent shall be in arrear for one year. Provisions are made for the renewal of the lease and for the payment of taxes, assessments, etc. These instruments are true leases according to a number of decisions rendered by the court of appeals of Maryland, among the number being *Getzendaffer v. Cayler* (38 Md., 280); *Mayer v. Ehrman* (57 Md., 624); *Presstman v. Silljacks* (58 Md., 334).

The interest of the lessor is real estate, that of the lessee is a chattel real passing to his personal representative in case of death and intestacy. The reversion of the lessor and the rent created, upon the death of the lessor, passes to his heirs at law, his devisees, or his grantees. Therefore, as the true relationship of landlord and tenant is created under the following instrument, the document is taxable under the paragraph in Schedule A relating to leases:

Lease for ninety-nine years.—Code, city or county.

This lease made this _____ day of _____, in the year one thousand eight hundred and ninety —, between _____ of _____ of the first part, and _____ of _____ of the _____ part: _____

Witnesseth, that the said _____, in consideration of the rent hereinafter expressed to be paid, do lease unto the said _____, his executors, administrators, and assigns, all _____ of ground and premises situate, lying and being in the _____ aforesaid and described as follows, to wit: Beginning for the same _____ Block.

Together with all improvements thereon made, lanes, alleys, ways— easements, emoluments, and advantages to the said ground belonging or in anywise appertaining.

To be held by the said _____, h— executors, administrators, and assigns, for the term of ninety-nine years, beginning on the day of the date of these presents _____, —he, _____ the said _____, h— executors, administrators, or assigns, yielding and paying unto the said _____, heirs, or assigns, _____ the rent or yearly sum of _____, and that in even and equal _____ yearly installments, accounting from the _____ day of _____, one thousand eight hundred and ninety—, over and above all deductions for taxes and assessments of every kind, levied or assessed, or hereafter to be levied or assessed,

on said demised premises, or the rent issuing therefrom. Provided, that if the said rent shall be in arrear, in whole or in part, at any time, then it shall be lawful for the said ———, heirs or assigns, to make distress therefor.

And provided also, that if the said rent shall be in arrear, in whole or in part, for sixty days, then it shall be lawful for the said ——— heirs or assigns, to reenter upon the hereby demised premises, and hold the same, until all the arrearages of rent thereon, and all expenses incurred by reason of such nonpayment, shall be fully paid.

And further provided, that if said rent shall be in arrear for one year, then the said ——— heirs or assigns, may reenter upon the premises hereby demised, and hold the same as if this lease had never been made. And the said ——— for ——— h—sel ——— heirs, executors, administrators, and assigns, covenant with the said ——— h— heirs and assigns, to pay the aforesaid rent, taxes, and assessments when legally demandable.

And the said ———, for ——— h—sel ——— heirs, executors, administrators, and assigns, do— hereby covenant with the said ———, h— executors, administrators, and assigns; that on the payment by the said lessee—, h— heirs, executors, administrators, or assigns, of said rent, and performance of all covenants hereon on ——— part to be paid and performed, he—, the said ———, h— heirs, executors, administrators, and assigns, will warrant the property hereby leased from all claims thereon, under or by said lessor or any person claiming by, from, or under — h—.

Also, that at any time during this demise, the said ——— ———, h— heirs or assigns, shall, on payment to ——— them of ten dollars as renewal fine, execute and deliver, or cause to be executed and delivered, to the said ——— h— executors, administrators, or assigns, at ——— their request and cost, a new lease of the above demised property for another term of ninety-nine years, to commence on the expiration of this, subject to the same rent, and with the same covenants, so that the demise hereby created may be renewable and renewed, from time to time, forever.

Witness ——— hand and seal ———.
 Test: } ——— ———. [SEAL.]
 } ——— ———. [SEAL.]

STATE OF MARYLAND, ———, to wit:

[Here follows notarial acknowledgment.]

Whenever the lessee assigns his interest, which it appears is done under a form of instrument similar to the one fully set forth in Treasury decision 21537, that form of deed, being an assignment of a leasehold interest, is taxable as an assignment of a lease and not as a deed of conveyance. Upon a thorough investigation of the subject of ground rents, it has been found that the system prevailing in Maryland is altogether different from that prevailing in Philadelphia. The estates created in Maryland by these instruments are leasehold estates and personal property, while in Pennsylvania they are conveyances of real estate descending to the heirs and not passing to the personal representative, as is the case in Maryland.

The ruling made in Treasury decision 21537 is hereby revoked.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*

MR. BENJ. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(222.)

Stamp tax—Notices of mining locations.

Notices of mining locations not taxable.—Deeds or conveyances of mines taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 8, 1900.

SIR: Revenue Agent Garner, who has just returned from a trip to Alaska, informs this office that you have not received the necessary instructions and pamphlets relative to the documentary stamp tax imposed by the war-revenue act.

You are hereby instructed that this office has ruled that notices of mining locations do not require any stamp under Schedule A of the war-revenue act. All deeds or conveyances of mines, however, are taxable under the provisions relative to conveyances of real property. * * *

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Hon. R. M. STEVENS, *United States Commissioner, Nome, Alaska.*

DIPLOMATIC CORPS.

(170.)

Stamp tax—Diplomatic corps.

Exemption of diplomatic corps from stamp tax on entries of goods for consumption or warehousing at any custom-house.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 29, 1900.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th instant, in reference to the taxability of members of the foreign diplomatic corps with respect to entries of goods, wares, and merchandise at any custom-house, either for consumption or warehousing.

In reply to your request for an expression of opinion as to whether, under Schedule A of the act, entries of imported goods passed free of duty for foreign ambassadors, ministers, etc., are likewise free from the stamp taxes, I have to state that it would seem that it would logically follow that if the goods of ambassadors, etc., were exempted from the customs duty that stamp duty on the entry should also be exempted.

The ruling of this office in respect to the exemption from tax of the diplomatic corps was based upon the opinion of Hon. James E. Boyd, Assistant Attorney-General, as follows:

The inquiry is made through the Riggs bank as to whether the checks and drafts of ambassadors, ministers, and other members of the foreign diplomatic corps residing in this country are subject to stamp duty.

I would hold that such checks and drafts should be exempted from the stamp tax, not because of any positive law, but upon the ground that it is a comity due from one nation to another.

It is laid down in Hall's International Law, page 191, that "the person of a diplomatic agent, his personal effects and the personal property belonging to him as the representative of his sovereign are not subject to taxation." Otherwise he enjoys no exemption from taxes and duties as of right. By courtesy, however, most, if not all, nations permit the entry free of duty of goods intended for his private use. The same principle is involved in the question here presented. Where the checks or drafts of a diplomatic agent are made in the course of the conduct of his business as such agent, or in connection with expenses incidental to his residence here as agent, they should be excused from the payment of tax.

If, however, such agents become property owners or engage in commerce or trade, like other people, then papers which are otherwise subject to tax made in connection with such ownership of property, or in carrying on commerce or trade, should be taxed.

Under this opinion of the Assistant Attorney-General this office has heretofore only exempted the diplomatic corps from the stamp tax on checks and drafts and on passage tickets from the United States to a foreign port.

This ruling is now hereby extended so as to exempt the diplomatic corps from stamp tax on entries of any goods, wares, or merchandise at any custom-house, either for consumption or warehousing, such goods being exempted by the Secretary of the Treasury from customs duties.

Respectfully,

G. W. WILSON, *Commissioner*.

The SECRETARY OF THE TREASURY.

DUTY OF RECORDING OFFICERS.

(165.)

Duty of recording officers.

The official record of a stampable instrument should invariably show whether the original was stamped, and the amount thereof.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., June 27, 1900.

To collectors and revenue agents:

From reports received by this office it is shown that many State officers, such as county recorders, registers, clerks, or others charged with the official recording of conveyances, mortgages, and like instruments affecting the ownership of property, have omitted to note upon the record of such instruments, made since June 13, 1898, whether the original instrument was stamped as required by the stamp act and the amount of the stamp. In some recorders' offices hundreds of such records have been found, which have occasioned investigations and the writing of a large number of letters, only to have the fact developed in a large majority of the cases that the original instrument in the hands of the grantee or mortgagee had been properly stamped at date of

execution. This condition of affairs and the labor imposed upon internal-revenue officers thereby, and the annoyance to the taxpayers resulting, is due entirely to the failure of the recording officer to note that the original instrument recorded by him was properly stamped and the amount of the stamp. In some such cases collectors have made inquiries as to whether any penalty was incurred by such negligence of the recording officer. To such inquiries this office has replied that the internal-revenue laws impose no penalty for such negligence other than to declare that the defective record shall not be used in evidence. The fact that the record is disqualified for use in any court proceedings is, therefore, a matter of grave importance in every community.

As illustrating the effect upon property rights of defective records of this kind, it is only necessary to refer to abstracts of title made from such official records. The abstracter, finding no indication that the conveyance or mortgage had been stamped, could not conscientiously certify to the title as being valid in the grantee or mortgagee. The proper remedy for such omissions by recording officers would seem to be that publicity be given to the fact generally, in their several communities, by internal-revenue officers and by publication, that property rights are being jeopardized by the negligence of such officers.

It is, of course, to be understood that the defective record does not invalidate the original instrument if it is properly stamped. The loss of the original instrument might in such case cause trouble.

G. W. WILSON, *Commissioner*.

(215.)

Unstamped instruments.

Recording officers should, in every instance where the instrument is stamped, make proper notation on the record.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 25, 1900.

SIR: Yours of the 21st instant is received, inclosing blank Form 456, sent by Collector A. D. Sanders to a client of yours. * * *

These notices of the collectors of internal revenue are due to the finding in the offices of State officers, such as recorders of instruments, clerks of courts, etc., records of instruments which fail to show that said instruments were stamped as required by the act of June 13, 1898. *Prima facie*, therefore, the instruments were not stamped, and it became the duty of the collectors to find out the facts. For this purpose they send out the forms, such as that to ———.

From a report just received from Collector Cole, at Syracuse, it appears that he has found that in a majority of cases in which the record fails to mention the stamp the instruments were in fact stamped.

The whole difficulty arises through the failure of the recording officers to make a complete record. They should, in every instance where the instrument is stamped, note the fact and the amount of the stamp on the record. This duty ought to suggest itself to any such officer. How else could an abstractor of title certify that the title is in the last grantee? Congress has declared an unstamped deed or mortgage invalid, and the record fails to show the instrument stamped.

It is hoped that recording officers will hereafter appreciate that they will save much trouble to all concerned by making proper notation on the record.

Respectfully,
Mr. E. C. ENGLISH, *Corning, N. Y.*

G. W. WILSON, *Commissioner.*

EXPRESS AND FREIGHT.

(13.)

Stamp tax—Express baggage receipts.

No tax on receipts issued for special-delivery baggage.—Treasury decision 21668 revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 9, 1900.

SIR: This office is in receipt of your letter of December 27, 1899, containing further information as to the method pursued in the transportation of special-delivery baggage by the Union Transfer Company of Philadelphia.

You submit form of check or ticket issued by said company for a piece of special-delivery baggage to be taken from the Windsor Hotel, Philadelphia, Pa., and delivered at the Fifth Avenue Hotel, New York City, and you ask to be informed whether such checks or tickets require a 1-cent stamp in accordance with Treasury decision 21668.

You are advised that this office has carefully reconsidered the question of the taxability of receipts issued by transfer companies for special-delivery baggage, and has decided that same are not subject to taxation. Treasury decision 21668 is hereby revoked.

Respectfully,
Mr. E. A. ALEXANDER, *Revenue Agent, Philadelphia, Pa.*

G. W. WILSON, *Commissioner.*

(62.)

Stamp tax—Receipts for bicycles.

The check or receipt given for a bicycle transported on a passenger train along with the owner is not subject to taxation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 8, 1900.

GENTLEMEN: This office is in receipt of your letter of February 23, in which you state that you have been informed that the Attorney-

General has issued a ruling to the effect that bicycles transported by railroad companies upon passenger trains, along with the owner of the bicycle, can be treated as excess baggage, and, therefore, no revenue stamp need be attached to the check or receipt issued for the bicycle, and you ask whether such a ruling has been made, and, if so, that a copy of same be sent you.

You are advised that the honorable Attorney-General has not made any ruling on this subject of which this office is aware. However, this office has ruled that the check or receipt given for a bicycle which is transported on a passenger train along with the owner of the bicycle is not taxable as an express or freight receipt or as a bill of lading. This check or receipt is given to a passenger on a railroad train and is a privilege connected with his transportation for which he purchased the ticket, and comes within the spirit, if not the letter, of the honorable Attorney-General's opinion in reference to excess baggage as contained in Treasury decision 20169.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Messrs. JAS. B. & BRYAN CUMMING, *Augusta, Ga.*

(63.)

Stamp tax—Mail carriers as common carriers.

Mail carriers who make a regular practice of carrying packages from town to town must issue stamped receipts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 8, 1900.

SIR: I have the honor to acknowledge the receipt of your letters, under date of March 6, in reference to the question of mail carriers being considered as common carriers, and required, therefore, under the act of June 13, 1898, to give a receipt, to which a 1-cent stamp must be affixed, for each package carried by them.

In connection with the above, you submit the following three questions:

1. Is a mail carrier required to give a receipt, to which must be affixed a 1-cent stamp, for a package which he gets at an express or freight office to deliver to a party in another town, a stamped receipt having already been issued for said package by the express or railroad company?

2. If a mail carrier receives a package from a party in a town to be taken to another town, where it is to be forwarded to its destination by express or freight, is the mail carrier required to give a stamped receipt, or will the receipt issued by the express or railroad company be sufficient?

3. Where a mail carrier receives several packages from one party in a town to be delivered to different parties in another town, must a stamped receipt be issued for each package?

I have the honor to advise you that under the paragraph of Schedule A, beginning with the words "Express and freight," this office has held that mail carriers who make a regular practice of carrying packages from one town to another town for which they receive a fee, are common carriers within the meaning of the law, and must for each package so carried issue a receipt, to which receipt must be affixed a 1-cent stamp. Mail carriers, however, who only occasionally carry packages as an accommodation and not for hire, would not be considered as common carriers within the meaning of the law, and would not be obliged to issue or stamp receipts for such packages.

Where a mail carrier gets a package at an express or freight office for delivery to a party in another town, for which a duly stamped bill of lading or receipt has been issued by the express or railroad company, no receipt is required to be issued by the mail carrier, providing the receipt issued by the express or freight company is sufficient to cover the transportation of the package to its final destination. If this receipt only covers the transportation of the package in question to the town where the mail carrier gets same for delivery in another town, then the mail carrier must issue a stamped receipt for said package.

Where a mail carrier receives a package in one town to be taken to another town, where it is to be forwarded by express or freight, the mail carrier is obliged to issue a stamped receipt to the party from whom he receives the package, and if this stamped receipt is sufficient to carry the package to its ultimate destination, the express company or railroad company to whom the mail carrier delivers this package is not required to issue another stamped receipt. If, however, the express company or railroad company refuses to recognize the mail carrier's receipt, then the express or railroad company must issue another stamped receipt.

Where a mail carrier receives several packages from one party in a town to be delivered to different parties in another town, he must issue a stamped receipt for each package.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*

HON. PERRY S. HEATH,

First Assistant Postmaster-General, Washington, D. C.

(100.)

Express companies—Stamp tax on receipts.

Express companies are not forbidden to shift the burden of the stamp tax by an increase of rates which are not unreasonable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 18, 1900.

To collectors of internal revenue and others concerned:

The appended decisions of the United States Supreme Court, relative to the payment of the stamp tax on express receipts, are published for the information of all concerned. G. W. WILSON, *Commissioner.*

SUPREME COURT OF THE UNITED STATES.—No. 220.—OCTOBER TERM,
1899.

*The American Express Company, Plaintiff in Error, v. Fred. A. Maynard, Attorney-General
of the State of Michigan, ex rel. George F. Moore et al.*

[In error to the Supreme Court of the State of Michigan.]

[April 16, 1900.]

The attorney-general of the State of Michigan, on the relation of George F. Moore and others, commenced proceedings in the circuit court of Wayne County, Mich., against the American Express Company. The company was described as "a joint stock association organized and existing under the laws of the State of New York and having its principal business office located in the city of New York, in said State." It was averred that the company complied with the requirements of certain statutes of the State of Michigan and had obtained the necessary certificate authorizing it to carry on an express business in that State, and in order to conduct such business had a large number of agents and offices in the State. The petition then alleged that on June 13, 1898, the Congress of the United States passed an act commonly designated as the war-revenue act, by which it was made the duty of express companies, on receiving a package for carriage, to issue a receipt for such package, and providing that the receipt thus issued should bear a 1-cent stamp. After referring to the text of the act of Congress on the above subject, it was alleged that by the provisions of the law in question the primary and absolute duty was imposed upon express companies to provide the receipt and to affix and cancel the 1-cent stamp as required by law. The following averments were then made:

"That by reason of a desire of the respondent (the express company), to avoid the payment of the stamp tax, so called, and to impose such obligation on the shipper, the respondent herein refuses to accept any goods for transportation unless such shipper attaches the stamp to the said bill of lading, manifest, or other evidence of receipt and forwarding for each shipment, or furnishes the money or means for that purpose to the said company, and that the said company thereby not only avoids its duty under said act of Congress to pay and bear its proportion of the revenues to meet war expenditures as provided by said act, but violates its duty as a common carrier to receive, accept, and deliver such goods, wares, and merchandise so offered and tendered to it for that purpose."

A number of instances were specified where it was averred the express company on the tender to it of packages for transportation as a common carrier had refused to receive the same and to issue receipts therefor "unless a stamp of the value of one cent was paid or provided" by the shipper. It was charged that the conduct of the express company was in violation of the obligations imposed upon it by the act of Congress in question, and constituted a refusal to perform its duty as a common carrier. The prayer was for a mandamus commanding the company to receive packages for transportation by express and issue a receipt with stamp duly canceled thereon, without seeking to compel shippers who might tender packages for carriage either to pay for the 1-cent stamp or to provide the means for so doing.

The answer of the express company admitted that it required persons who tendered packages for carriage by express either to pay or provide the means for defraying the cost of the 1-cent stamp, but denied that its

conduct in so doing was a violation of the act of Congress by which the 1-cent tax on express receipts was imposed. On the contrary, it was averred that the act of Congress, when properly construed, although imposing the absolute duty to issue a receipt for every package as therein provided, left the question of who should pay for the stamp free for adjustment between the shipper and the express company. By the act of Congress, it was asserted, the express company had, therefore, the right or privilege of insisting that those who offered packages to be carried by express should either furnish the 1 cent stamp or provide the means of paying it. It was, moreover, alleged that the company had in effect but increased its rates on each shipment by adding to the previous rates the sum of the stamp tax. And it was averred that this increase the company was not forbidden to make, by the act of Congress imposing the 1-cent stamp tax, and that the rate as increased by exacting that the 1-cent stamp should be furnished or that its value be paid for by the shipper was just and reasonable, and was not in conflict with the act of Congress. The answer was in effect demurred to as not stating a defense. The case was submitted for decision on petition and answer. The court ordered the mandamus to issue substantially as prayed for. The cause was then removed by writ of certiorari to the supreme court of the State of Michigan, where the judgment of the trial court was affirmed. (77 Northwestern, 317.) By an allowance of a writ of error the judgment of the supreme court of the State is before us for review.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court:

We will first dispose of the claim that this court is without jurisdiction to review the judgment, and that hence the writ of error should be dismissed. The contention is based upon the following: (1) that the proceeding below, being for a mandamus, was not a "suit" within the meaning of that term as employed in section 709 of the Revised Statutes; and (2) because no Federal question is involved and no such question was below decided.

The first proposition is not tenable. (*McPherson v. Blacker*, 146 U. S., 1, 24; *Hartman v. Greenough*, 102 U. S., 602.)

The second is likewise without merit. From the summary of the pleadings just made in the statement of the case, it is apparent that the issue between the parties involved an assertion on the one side that the act of Congress imposed on the express company the absolute duty of furnishing the receipt, of affixing the stamp thereto, and canceling the same. The argument was that it was hence a violation of the duty imposed upon the express company by the act of Congress for the company either to demand the stamp or the amount thereof from the shipper, and that it was also a violation of the act of Congress for the express company to increase its rates to the extent necessary to accomplish the result of securing the reimbursement of the amount of the 1-cent stamp tax. On the other hand, the defense of the express company was that under the act of Congress it had the right, privilege, or immunity (which it specially set up and claimed), of demanding the payment of the 1 cent or of increasing its rates to the extent that the tax imposed a burden upon it, providing only the rates charged were just and reasonable. The question thus presented was in substance the only one decided by the supreme court of the State. In stating the issues arising for its decision, the court said: "The main question in the case relates to the construction to be placed upon the act in question"—that is, the act of Congress. After a review of the provisions of

the statute it was decided that under it the express company could not in any event or by any means transfer the burden of the tax in question. Considering the right of the express company to increase its rates to the extent necessary to secure the payment of the tax, by the shipper, the court said :

"It is contended, however, that the company has the right to make new regulations and establish new rates to meet all this burden. It is contended that the effect of this is to throw the burden upon the shipper. It is apparent upon the face of this proceeding that the very purpose of this change in the regulations and the increase of rates is to avoid the payment of the tax, and thus cast upon the shipper the burden which the act of Congress puts upon the company. This is but an evasion and a subterfuge to avoid the terms of the act."

The foregoing reasoning was supplemented by comment upon the fact that the increase of rate resulting from the charge of 1 cent on each package was made without reference to the distance each package was to be carried. We do not, however, understand the remarks on this subject as implying that the court below decided that the rate as increased by the 1 cent was intrinsically unreasonable without regard to the provisions of the act of Congress, but only that the rate as so increased was unreasonable, because an attempt on the part of the express company to shift the burden of the tax imposed upon it by the act of Congress, and hence was by legal inference forbidden by that act. No other view is possible when the state of the record is considered. As we have seen, the controversy was submitted on petition and answer. It is nowhere, however, averred in the petition that the rates, with or without the addition of the tax, were intrinsically unjust and unreasonable; while in the answer, following an averment as to the enactment of the stamp act and its resulting effects, it was averred as follows :

"Respondent therefore decided to raise and did raise its rates of transportation to an amount reasonable and just, and only necessary to meet the change of conditions made by said act, and save itself from great loss of revenue and profits as compared with its earnings before the passage of said act.

"And respondent submits and asserts that it had the full and perfect right to make such change in its method of transacting its business and in its former rates for transportation."

As, therefore, upon the submission of the cause upon the pleadings, there was no controversy as to the intrinsic reasonableness of the increased rates, it follows that if we were to hold that the court below had decided that the increased rates were unreasonable in themselves, we would conclude that the court below had so held, although it was substantially admitted on the record by both parties that the increase of rates was just and reasonable if not forbidden by the act of Congress. But such action can not be attributed consistently with reason and justice. This being the state of the case, the Federal question presented is wholly unaffected by what was said by the court on the subject of the right of the corporation to increase its charges by the amount of the tax. As there was no allegation that the rates existing prior to the imposition of the 1-cent stamp tax were unreasonable, it would follow that the rates which were otherwise reasonable were decided not to be so solely because there was added to the charge for each package the exact amount of the increased cost for transporting the package, occasioned as to each package by the specific imposition on each by the act of Congress of the 1-cent stamp tax. But to cause rates which were conceded to be reason-

able to become unreasonable because alone of such increased charge the assumption must be made that the act of Congress not only imposed the burden of the tax solely on the express company, but also forbade its shifting the same by any and every method. And no other view is, in reason, possible when the averments of the answer are borne in mind. It hence results that the Federal question, although changed in form of statement, remains in substance the same. In the changed form it is as follows: Did the act of Congress deprive the express company of the right to shift the burden of the tax by increasing the rate by the exact amount distinctly and separately imposed by the act upon each shipment, and hence render the charge unreasonable, which would be in itself reasonable, except for the hypothesis that the act of Congress renders all efforts to shift the tax illegal.

It follows that the case as made by the pleadings, and which was decided below, involved a right, privilege, or immunity under the act of Congress, which was specially set up and claimed by the express company, to contract with the shippers for the payment of the tax provided by the act of Congress, or to increase its rate, within the limit of reasonableness, to the extent of such tax, which right, privilege, or immunity was denied and held to be without merit by the court below. There is, therefore, jurisdiction. (Rev. Stat., 709.)

The controversy which is contained in the merits of the cause is resolvable into three questions: First. Does the act of Congress impose upon the express company the duty of making a receipt for a package tendered to it, and does it also forbid the express company from requiring the shipper to furnish the stamp to be affixed to the receipt, or of supplying the means of paying for the same? Second. If the act of Congress does impose such duty on the express company and does inhibit it from requiring that the shipper furnish the stamp or the means of paying for it, does the act further forbid the express company from seeking to cast the burden on the shipper by an increase of rates? Third. And, as a corollary of the second proposition, does an increase of rate by an express company which is otherwise just and reasonable become unlawful, under the act of Congress, because such increase is made with the purpose of shifting the burden of the 1-cent tax from its own shoulders to that of the shipper?

The first proposition is unnecessary to be considered, since even although it be conceded that the act of Congress imposes on the express company the duty of paying the 1-cent stamp tax, this admission would not be at all decisive of the cause unless also it be ascertained under the second proposition that the act of Congress also forbids the express company from shifting the burden of the tax by means of an increase of rates. And no necessity for passing on the first proposition arises from the mere fact that the decision of the second proposition requires a consideration of the provisions of the statute which it would be necessary to take into view if the first proposition was under consideration.

It is also to be observed that the second and third propositions, which involve, the one the right to shift the burden of the tax by exacting that the 1 cent be provided, and the other the power to increase rates within the limits of the requirement that the charge as increased be reasonable, both depend upon the same considerations.

Indeed, the question into which all the issues are ultimately resolvable is whether the right exists to shift the burden, of course, ever circumscribed by the duty of not exceeding reasonable rates. If it does not—that is, upon the hypothesis that it not only can be, but is, forbidden, then it must result that all methods adopted to attain the prohibited

result are void. On the contrary, if the right to seek to shift the burden obtains, then the substantial result of what is done becomes the criterion, and the mere fact that the motive announced, for a reasonable increase of rates, is declared to be a shifting of the burden, can not prevent the exercise of the lawful right.

The special provisions of the law upon which the case turns are the first paragraph of section 6 and the express and freight clause of Schedule A, forming a part of section 25. (30 Stat., 451, 459.)

The paragraph of section 6 referred to is as follows :

"SEC. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule."

Now, there is nothing in the provisions just quoted which, by the widest conjecture, can be construed as expressly forbidding the person upon whom the taxes are cast from shifting the same by contact or by any other lawful means. An inference to the contrary arises from the fact that the duty is imposed in the alternative on "any person or persons, or party, who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued."

The language of the express and freight clause of Schedule A is as follows :

"Express and freight: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and canceled, as it is in this Act provided, to each of said bills of lading, manifest, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent: *Provided*, That but one bill of lading shall be required on bundles or packages of newspapers when inclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of fifty dollars for each offense, and no such bill of lading, manifest, or other memorandum shall be used in evidence unless it shall be duly stamped as aforesaid."

The argument is that as it is made the duty of the express company to make and issue "a bill of lading, manifest or other evidence of receipt and forwarding for each shipment, * * * and there shall be duly attached and canceled, as in this Act provided, to each of said bills of lading, manifests or other memorandum, and to each duplicate thereof, a stamp of the value of one cent;" therefore, the obligation is imposed absolutely on the express company, not only to make and furnish the receipt, but to issue it with the stamp duly canceled. But as we have

said, though the correctness of the claim be *arguendo* taken for granted, such concession does not suffice to dispose of the essential issues. They are that by the statute the express company is forbidden from shifting the burden by an increase of rates, although such increased rates be in themselves reasonable. As no express provisions sustaining the propositions are found in the law, they must rest solely upon the general assumption that because it is concluded that the law has cast upon the express company the duty of paying the 1-cent stamp tax, there is hence to be implied a prohibition restraining the express company from shifting the burden by means of an increase of rates within the limits of what is reasonable. In other words, the contention comes to this, that the act in question is not alone a law levying taxes and providing the means for collecting them, but is moreover a statute determining that the burden must irrevocably continue to be upon the one on whom it is primarily placed. The result follows that all contracts or acts shifting the burden, and which would be otherwise valid, become void. To add by implication such a provision to a tax law would be contrary to its intent, and be in conflict with the general object which a law levying taxes is naturally presumed to effectuate. Indeed, it seems almost impossible to suppose that a purpose of such a character could have been contemplated, as the widest conjecture would not be inadequate to foreshadow the far-reaching consequences which would ensue from it. To declare upon what person or property all taxes must primarily fall is a usual purpose of a law levying taxes. To say when and how the ultimate burden of a tax shall be distributed among all the members of society would necessitate taking into view every possible contract which can be made, and would compel the weighing of the final influence of every conceivable dealing between man and man. A tax rests upon real estate. Can it be said that by the law imposing such a tax it was intended to prevent the owner of real property from taking into consideration the amount of a tax thereon, in determining the rent which is to be exacted by him. A tax is imposed upon stock in trade. Must it be held that the purpose of such a law is to regulate the price at which the goods shall be sold, and restrain the merchant, therefore, from distributing the sum of tax in the price charged for his merchandise? As the means by which the burdens of taxes may be shifted are as multiform and as various as the power to contract itself, it follows that the argument relied on if adopted would control almost every conceivable form of contract and render them void if they had the result stated. Thus, the price of all property, the result of all production, the sum of all wages, would be controlled irrevocably by a law levying taxes, if such a law forbade a shifting of the burden of the tax and avoided all acts which brought about that result. It can not be doubted that to adopt by implication the view pressed upon us would be to virtually destroy all freedom of contract, and in its final analyses would deny the existence of all rights of property. And this becomes more especially demonstrable when the nature of a stamp tax is taken into consideration. A stamp duty is embraced within the purview of those taxes which are denominated indirect, and one of the natural characteristics of which is, although it may not be essential, that they are susceptible of being shifted from the person upon whom in the first instance the duty of payment is laid. We are thus invoked by construction to add to the statute a provision forbidding all attempts to shift the burden of the stamp tax when the nature of the indirect taxation which the statute creates suggests a contrary

inference. And in this connection, although we have already called attention to the consequences which must generally result from the application of the doctrine contended for, it will not be inappropriate to refer to certain of the provisions of the act now under consideration, which more aptly serve to make particularly manifest the consequences indicated. Thus, perfumery, patent medicines, and many other articles are required by the statute to be stamped by the owner before sale. The logical result of the doctrine referred to would be that the price of the articles so made amenable to a stamp tax could not be increased, so as to shift the cost of the stamp upon the consumer; yet it is apparent that such a construction of the statute would be both unnatural and strained.

The argument is not strengthened by the contention that as the law has imposed the stamp tax on the carrier, public policy forbids that the carrier should be allowed to escape his share of the public burdens by shifting the tax to others who are presumed to have discharged their due share of taxes. This argument of public policy, if applied to a carrier, would be equally applicable to all the other stamp taxes which the law imposes. Nor is the fact that the express company is a common carrier and engaged in a business in which the public has an interest, and which is subject to regulation, of importance in determining the correctness of the proposition relied upon. The mere fact that the stamp duty is imposed upon a common carrier does not divest such tax of one of its usual characteristics or justly imply that the carrier is in consequence of the law deprived of its lawful right to fix reasonable rates. Unquestionably a carrier is subject to the requirement of reasonable rates, but, as we have seen, no question of the intrinsic unreasonableness of the rates charged arises on this record or is at issue in this cause. As previously pointed out, to decide as a matter of law that rates are essentially unreasonable from the mere fact that their enforcement will operate to shift the burden of a stamp tax would be in effect but to hold that the act of Congress by the mere fact of imposing a stamp tax forbids all attempts to shift it, and consequently that the carrier is deprived by the law of the right to fix rates, even although the limit of reasonable rates be not transcended. This reduces the contention back to the unsound proposition which we have already examined and disposed of.

There is a special provision of the law which grants affirmatively the right to add the tax to the cost of an instrument, and hence it is urged this express authority in one case is pregnant with the denial of a right to do so in other cases. The clause in the statute referred to is found in a paragraph of Schedule A, whereby a stamp tax is imposed on "Bill of exchange (inland), draft, certificate of deposit drawing interest, or order for the payment of any sum of money." * * *

The second and concluding sentence of the paragraph reads as follows:

"And from and after the first day of July, eighteen hundred and ninety eight, the provisions of this paragraph shall apply as well to original domestic money orders issued by the Government of the United States, and the price of such money orders shall be increased by a sum equal to the value of the stamps here provided for."

Without the provision last quoted, authority would have been wanting to increase the cost of a Government money order by adding the sum of the tax imposed upon such order to the charge therefor, because the charge for a money order was fixed by law. This at once explains the necessity for conferring authority to add to the cost of the money order

the amount of the stamp tax. Instead, therefore, of giving rise to the suggestion that the right to shift the burden of other stamp taxes was taken away in all cases where there was liberty and power to contract, the provision relied on is persuasive to the contrary. For, clearly, the express authority conferred to do that which the law otherwise forbade in consequence of the want of power in a Government official can not with reason be held to imply a prohibition against doing that which was not forbidden by law. The argument, in effect, amounts to this and nothing more: That, because it was imperatively necessary to confer a power upon a Government officer which, owing to statutory restriction, he otherwise would not have possessed, therefore the legal deduction must be drawn that freedom of contract as between those who had the right to contract was destroyed.

But it is asserted that the war-revenue act of 1898 was modeled upon the act of July 1, 1862, providing internal-revenue tax (12 Stat., 432), and as the act of 1862 plainly manifested the purpose of Congress to impose a stamp tax on express companies and to forbid them from shifting the burden arising from such tax, therefore, the act under consideration should be construed as having the same effect. The fact that the present act was modeled upon the act of 1862 is undoubted (see sec. 94 of the act of 1862, 12 Stat., 475), but the text of the act of 1862 expressed no restraint upon the power of shifting by contract or by an increase of rates within the limit of the requirement that they should be reasonable. It follows that testing the present act by that of 1862 throws no additional light upon the controversy. The claim that the act of 1862 contained a prohibition against shifting is thus inferred. By the act of 1862 a stated per cent of tax was imposed upon the gross receipts of railroads, steamboats, and ferryboats, as well as toll bridges. (Sec. 80, 12 Stat., 468.) After providing for the levy and collection of the taxes in question, the following proviso was applied to the section by which the taxes just referred to were levied: "*Provided*, That all such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid or be liable to pay such fare to the contrary notwithstanding."

This express authority to shift the burden of the tax on gross receipts, it is claimed under the rule of *inclusio unius*, justifies the implication that the power to shift did not exist as to taxes imposed by other portions of the act of 1862, to which the proviso did not apply.

In passing, it is worthy of remark that by the act of March 3, 1863 (12 Stat., 713), it was enacted (sec. 10) that on and after the 1st day of April, 1863, "any person or persons, firms, companies or corporations, carrying on an express business shall, in lieu of the tax and stamp duties imposed by existing laws, be subject to pay a duty of 2 per centum on the gross amount of all the receipts of such express business, and shall be subject to the same provisions, rules, and penalties as are prescribed in section 80 of the act to which this is an amendment." In other words, when in 1863 the stamp tax relating to express companies was abrogated and a tax on gross receipts substituted therefor, the express companies were authorized to add the result of the gross receipt tax to their charges, any law or contract to the contrary. But the implication deduced from the authority conferred by the statute of 1863 to shift the burden of the tax on gross receipts levied on railroads, etc., by an increase of charges, is unsound. Indeed, the proviso in question,

when properly construed, gives rise to an inference contrary to the one sought to be drawn from it.

The tax imposed under the section in question was not in form a stamp tax, but on gross receipts, and the proviso referred to may, from abundance of caution, have been inserted to leave no room for the assumption that a tax thereby imposed was a direct tax and not subject to be shifted. Besides, the whole context manifests the purpose not to declare a rule in violation of public policy as to particular corporations, but to enable such corporations to possess the power to shift the tax by increasing its charges, even although contracts or restrictions previously imposed might otherwise prevent.

The right to shift by an increase of rates within what is reasonable can only be held to be illegal upon the assumption that public policy forbids it. If such be taken to have been the principle of public policy embodied in the act of 1862, that act must be held to have repudiated, by the proviso to section 80, the very public policy by the light of which it is contended the act must be interpreted. If there was a rule of public policy giving rise to the assumption that stamp taxes relating to express companies could not be shifted, it becomes impossible in reason to understand why, when the taxation was changed by the act of 1863 from a stamp tax to one on gross receipts, the express companies should have been brought within the proviso to section 80 of the act of 1862. Clearly, if the rule of public policy which is relied on existed it would have been as cogently applicable to the one form of tax as to the other.

In the case of the State Freight Tax (15 Wall., 232), the court was called upon to notice a State law conferring a right to charge over by an increase of rates the sum of tax imposed. In considering the subject (pp. 273, 274), it was said:

"The provision is as follows: 'Corporations whose lines of improvement are used by others for the transportation of freight, and whose only earnings arise from tolls charged for such use, are authorized to add the tax hereby imposed to said tolls, and to collect the same therewith.' Evidently this contemplates a liability for the tax beyond that of the company required to pay into the treasury, and it authorizes the burden to be laid upon the freight carried, in exemption of the corporation owning the roadway. It carries the tax over and beyond the carrier to the thing carried. Improvement companies, not themselves authorized to act as carriers, but having only power to construct and maintain roadways, charging tolls for the use thereof, are generally limited by their charters in the rates of toll they are allowed to charge. Hence the right to increase the tolls to the extent of the tax was given them in order that the tax might come from the freight transported, and not from the treasury of the companies. It required no such grant to companies which not only own their roadway, but have the right to transport thereon. Though the tolls they may exact are limited, their charges for carriage are not. They can, therefore, add the tax to the charge for transportation without further authority."

Other contentions as to the construction of the act based upon various other provisions have been pressed with great earnestness, but we deem it unnecessary to consider them, as the foregoing considerations dispose of the case. It follows that the court below erred in holding that by the act of Congress the express company was forbidden from shifting the burden of the stamp tax by an increase of rates which were not in themselves unreasonable. The judgment below rendered must, there-

fore, be reversed, and the case be remanded for further proceedings not inconsistent with this opinion.

And it is so ordered.

Mr. Justice HARLAN and Mr. Justice McKENNA dissenting.

We are of opinion that the act of Congress imposed upon the express company the duty not only of affixing at its own expense the required stamp upon any receipt issued by it to a shipper, but of canceling such stamp, thus giving to the shipper a receipt that could, when necessary, be used as evidence. Whether the company, having issued a receipt duly stamped and canceled, could increase its charges against the shipper for the purpose, whether avowed or not, of meeting this additional expense, is not, in our opinion, a Federal question, and upon that point this court need not express an opinion.

SUPREME COURT OF THE UNITED STATES.—No. 248.—OCTOBER TERM, 1899.

William Crawford, appellant, v. William L. Hubbell, as Treasurer of the Adams Express Company.

[On a certificate from the United States circuit court of appeals for the second circuit.]

[April 16, 1900.]

Mr. Justice WHITE delivered the opinion of the court.

The certificate and the questions which arise from it are as follows :

"This cause came before this court on February 2, 1899, upon an appeal taken by the complainant to review a decree of the circuit court, southern district of New York, sitting in equity. Such decree dismissed the bill. As to a question of law arising upon said appeal, this court desires the instruction of the Supreme Court for its proper decision.

STATEMENT OF FACTS.

"This suit is for an injunction to restrain the express company from refusing to accept express packages from complainant for transportation, except upon the condition that complainant either pay for or provide the war revenue stamp required to be affixed to each receipt in addition to its usual and ordinary charges for transportation as the same existed on and for a long time prior to July 1, 1898. The defendant company, since July 1, 1898, has fixed rates of compensation which it offers to accept for services rendered by it, whereby, in addition to the amount of its charges as the same existed on and for a long time prior to July 1, 1898, it requires the shipper either to provide or pay for the cost of the stamp on the bill of lading or receipt required to be issued by the act of Congress of June 13, 1898, known as the 'war-revenue act.' It has made known these charges to shippers, and particularly to complainant, and refuses to accept packages for transportation except upon payment thereof. The pleadings are annexed to this certificate.

QUESTIONS CERTIFIED.

"Upon the facts set forth, the questions of law concerning which this court desires the instruction of the Supreme Court for its proper decision are :

"1. Does the war-revenue act of June 13, 1898, impose upon the car-

rier exclusively the tax represented by the stamp to be affixed to each bill of lading, manifest, or other evidence of receipt required to be issued to each shipper of goods accepted by the carrier for transportation, or does it impose the tax merely upon the transaction of shipment, leaving it to be paid indifferently by either party thereto?

"2. If the war-revenue act of June 13, 1898, does impose such tax exclusively upon the carrier, does it preclude the carrier, who is by such act required to issue to each shipper a bill of lading, manifest, or other evidence of receipt, from relieving itself of the expense of affixing and canceling the stamp required to be attached to such bill of lading, manifest, or other evidence of receipt.

"In accordance with the provisions of section 6 of the act of March 3, 1891, establishing courts of appeal, etc., the foregoing questions of law are by the circuit court of appeals hereby certified to the Supreme Court."

The subject to which the certificate relates and the matter embraced in the questions submitted has been considered, and was passed on in an opinion this day announced in the case of the American Express Company *v.* Fred A. Maynard, Attorney-General of the State of Michigan, *ex rel.* George F. Moore *et al.*, No. 220 of the docket of this term.

For the reasons given in the opinion in this case just referred to, it is unnecessary to answer the first question submitted, and a negative answer to the second question is required.

And it is so ordered.

(126.)

Duties of carriers with respect to issuing stamped receipts.

[Int. Rev. Circular No. 570.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 14, 1900.

The following are the special provisions of the war-revenue act relating to the duties of carriers in issuing receipts for goods received for transportation :

Express and Freight : It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included ; and there shall be duly attached and canceled, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent : *Provided*, That but one bill of lading shall be required on bundles or packages of newspapers when inclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of fifty

dollars for each offense, and no such bill of lading, manifest, or other memorandum shall be used in evidence unless it shall be duly stamped as aforesaid.

In the case of the American Express Company *v.* Fred A. Maynard, the United States Supreme Court has held, in an opinion filed April 16, 1900 (TREASURY DECISIONS, Int. Rev. No. 100), in construing the above provision, that the express company is not forbidden from shifting the burden of the stamp tax by an increase of rates which are not in themselves unreasonable.

The court did not hold that it was not the duty of the express company to give a duly stamped receipt to the shipper for each shipment, but that the tax might be shifted by an increased charge for transportation within the limits of what is reasonable.

In conformity with the foregoing opinion, the following rulings are promulgated for the guidance of all concerned :

1. The obligation of every carrier receiving goods for domestic transportation to issue a stamped receipt therefor, with the stamp duly canceled, is absolute and without exception, under a penalty for failure of \$50 for each offense. The Commissioner of Internal Revenue has no jurisdiction whatever in the matter of the increased rate which the Supreme Court states the carrier may charge the shipper for the purpose of indemnifying himself for the stamp tax, except in the case of goods transported for the United States.

2. Where officers of the United States ship goods by carrier and the carrier has no existing contract with the United States, whereby the said goods are to be carried at a fixed rate, the stamped receipt must be issued to the officer by the carrier, and the officer may pay an additional rate, not exceeding 1 cent for any one shipment, and it will be allowed in his accounts.

3. Where officers of the United States ship goods by carrier, and the carrier has an existing contract with the United States, whereby such goods are to be carried at a fixed rate, the carrier must issue to the officer a stamped receipt duly canceled for each shipment, as in other cases, but the officer must not pay any increased rate for transportation, such rate having already been fixed by contract. See opinion of Attorney-General, dated August 26, 1899, published in TREASURY DECISIONS (vol. 2, 1898, No. 19996).

The obligation of the carrier to issue *duplicate* receipts to shippers is not imperative, as in the case of originals, but if the carrier issues duplicates he must stamp them.

The word "receipt," whenever used in this circular, must be understood as including bills of lading, manifests, or other memoranda.

G. W. WILSON, *Commissioner*.

IMPRINTED STAMPS.

(183.)

Imprinted stamps—List of contractors authorized to imprint stamps, also list of stamp agents, together with instructions as to procurement of said stamps.

[Int. Rev. Circular No. 541, revised.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 26, 1900.

To collectors and stamp agents:

The following list contains the names and addresses of all contractors authorized to imprint revenue stamps on checks, drafts, and other instruments for the fiscal year beginning July 1, 1900, together with the name of the stamp agent in charge of imprinting stamps at each establishment:

Contractor.	Address.	Stamp agent.
Geo. D. Barnard.....	St. Louis, Mo.....	J. W. Pettijohn
L. J. W. Wall.....	do.....	Peter S. Bantz.
J. Ogden Armour.....	Chicago, Ill.....	D. H. Lamberson.
Philo F. Pettibone.....	do.....	I. L. Gifford.
The American Imprinting Company.....	New York, N. Y.....	Eugene Delmer.
The Millikin Imprinting Company.....	do.....	A. Smith.
The Franklin-Lee Bank-Note Company.....	do.....	G. G. Beers.
The Union Bank-Note Company.....	Kansas City, Mo.....	J. C. Lepscum.
The Hudson-Kimberly Publishing Company.....	do.....	Jas. McCann.
Geo. M. Courts.....	Galveston, Tex.....	J. D. Settle.
J. Henry Naas.....	Baltimore, Md.....	W. B. Jenkins.
Wm. A. Carrie & Co.....	Boston, Mass.....	Frank Cousins.
C. H. Brandon.....	Nashville, Tenn.....	J. C. Jacobus.
A. M. Glossbrenner.....	Indianapolis, Ind.....	E. E. Widup.
The Strobbridge Lithograph Company.....	Cincinnati, Ohio.....	A. E. B. Stephens.
The Penn Printing and Publishing Company.....	Philadelphia, Pa.....	J. C. Johnson.
The Pueblo Lithographing and Printing Company.....	Pueblo, Colo.....	W. E. Stimpson.
The Union Lithograph Company.....	San Francisco, Cal.....	F. A. Sprague.
The J. C. Hall Company.....	Providence, R. I.....	C. D. Sellow.
The Combe Printing Company.....	St. Joseph, Mo.....	E. O. Wild.
Thomas E. Cootey.....	Minneapolis, Minn.....	F. M. Barnard.
The Tucker-Hanford Company.....	Seattle, Wash.....	G. E. Cleveland.
The Hall Lithographing Company.....	Topeka, Kans.....	Fred K. Brown.
The Evening Wisconsin Company.....	Milwaukee, Wis.....	John Saveland.

INSTRUCTIONS RELATIVE TO PROCURING IMPRINTED STAMPS.

Persons desiring to have stamps imprinted upon checks, drafts, or other instruments will make application therefor themselves, or through their agents, who must not be a contractor for the imprinting of stamps, to a collector of internal revenue, transmitting or presenting with such application payment for the stamps. The application must state the name and address of the contractor who will imprint the stamps and should authorize the delivery of the instruments when stamped to the said contractor. Collectors will not accept money from contractors for stamps to be imprinted for other persons, under any circumstances, and stamp agents will refuse to imprint stamps except upon orders fully complying with these instructions. When orders are issued for stationers or other agents, for stamps to be imprinted for other persons,

the stamp agent to whom such order is directed must enter upon the back thereof the name of each person, firm, or corporation for whom stamps are imprinted on such order, together with the date and number of stamps imprinted for each. Upon receipt of application and payment for imprinted stamps the collector will forward to the stamp agent at the establishment of the contractor designated an order for the imprinting of the stamps and the delivery of the stamped paper to the contractor. Collectors should in all cases attach their seals to such orders, and transmit them by mail directly to the stamp agent to whom they are issued. Stamp agents must refuse to receive or recognize orders for imprinted stamps when presented or forwarded by any person other than the collector or deputy collector who issued the same. Blank checks, drafts, or other instruments to be imprinted with revenue stamps should be forwarded by the person desiring the same, at his expense, directly to the contractor who will imprint the stamps. Stamps can not be imprinted on blank paper.

When the stamps are imprinted and delivered to the contractor, the agent must take the contractor's receipt therefor.

The Government will not pay any expense or assume any risk on instruments forwarded to contractors or on stamped instruments returned by contractors to owners.

The contractor's charge for imprinting stamps is limited by the terms of his contract with the Government to 80 cents per thousand stamps imprinted when imprinted upon sheets containing 5 or more stamps, and \$1 per thousand stamps when imprinted upon sheets containing less than 5 stamps to the sheet, and payment for imprinting stamps should be made directly to the contractor. All stamps shall be imprinted at the price herein named, without discount or rebate, and only upon checks, drafts, or other instruments delivered entirely at the expense of the person, firm, or corporation presenting the same. When the stamps are imprinted and delivered to the contractor, he shall, under the direction and supervision of the stamp agent, at the contractor's expense, pack in the proper manner for shipment, all checks, drafts, or instruments upon which said stamps were imprinted by him, and ship the same wholly at the expense and according to the direction of the person, firm, or corporation that presented them. Contractors are prohibited from paying any transportation charges whatever on instruments forwarded them to be imprinted or on stamped instruments returned by them to the owners. They are also prohibited from giving, offering, or advertising any discount, rebate, or reduction in the printing of taxable instruments or claiming better facilities for such work by reason of their contract with the Government for the imprinting of stamps.

Any violation of the foregoing instructions by a contractor will be deemed sufficient cause for the cancellation of his contract, and any failure on the part of the stamp agent to immediately report to this

office the violation of any of the terms or conditions of said contract will be considered cause for his removal from office.

IMPRINTING STAMPS IN LIEU OF OTHERS RENDERED USELESS BY ACCIDENT OR ERROR IN PRINTING OR BINDING.

Where instruments imprinted with stamps are rendered worthless by accident or error in printing or binding, they may be returned to the stamp agent under whose supervision stamps were imprinted thereon with the application to imprint other stamps in lieu thereof on instruments presented for that purpose. Such application should be accompanied by an affidavit setting forth the facts that such stamped instruments were rendered worthless, the character of the error or accident, the number thereof, the date when and the collector from whom the stamps were purchased. Upon receipt of the application, the stamp agent will indorse his recommendation thereon and forward the same to the office of the Commissioner of Internal Revenue for consideration. The spoiled stamped instruments thus returned to the stamp agents will be retained by them until an order is issued by the Commissioner for the destruction of the same under the supervision of a revenue officer. When destroyed, a joint certificate must be made by said officer and the stamp agent, stating the number and denomination of stamps destroyed, for whom and upon what order the same were imprinted, and the number of such stamps imprinted for each person, firm, or corporation, which certificate shall be forwarded to this office. Stamp agents will enter upon their records and reports the names of all persons for whom stamps are reimprinted, together with number of stamps and the original order upon which such stamps were reimprinted.

G. W. WILSON, *Commissioner*.

INSURANCE.

(14.)

Stamp tax—Insurance policies.

Instruments evidencing insurance of, or guarantying titles to, real estate, taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 11, 1900.

To collectors of internal revenue and revenue agents:

It has come to the knowledge of this office that a number of corporations engaged in the business of insuring or guarantying titles to real estate have not been affixing to the documents evidencing this insurance or guarantying, the requisite stamps representing the tax accruing on the premium charged for such insurance or guarantyship.

You are, therefore, requested to cause an investigation to be made in

your respective districts and divisions, looking to the determination of whether or not such corporations are complying with the provisions of the act. These classes of instruments are taxable under the paragraph in Schedule A entitled "Insurance (casualty, fidelity, and guarantee)." Under this paragraph, any person, association, company, or corporation transacting the business of insuring titles to real estate is required to affix to such policy of insurance, bond, or obligation stamps in the amount of one-half of 1 cent for each dollar or fractional part thereof of premium charged. Each contract or obligation executed by any such person, association, company, or corporation, under which title to real estate is guaranteed, is subject to the same taxation.

In cases where these documents have been issued without having affixed thereto the proper stamps as required by law, you will please report the circumstances to this office that the matter may receive the proper attention.

G. W. WILSON, *Commissioner*.

(162.)

Stamp tax—Life-insurance policies.

When a life-insurance company unites with another company and the reorganized company assumes the risks of the absorbed company, no tax accrues on policies issued in lieu of the surrendered policies of the absorbed company unless an additional amount of insurance is written.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., June 22, 1900.

SIR: I have to acknowledge the receipt of your letter of the 8th instant, relative to a report made to you by Revenue Agent James W. Martin, under date of May 31, 1900, respecting certain conditions attending the issuance of life-insurance policies by the Franklin Life Insurance Company, of Springfield, Ill. Revenue Agent Martin submits the following statements of facts:

First. The Franklin Life Association of Springfield, Ill., was duly organized under the laws of Illinois as an assessment company in July, 1884. The plan of this company was such as not to require a deposit of securities with the insurance department of the State of Illinois in order to secure the payment of risks. The company being operated on the assessment plan, no fixed rate of insurance per annum was provided for, the payment of losses being made by individual pro rata assessment.

Second. The People's Insurance Company of Springfield, Ill., was duly incorporated under the laws of the State of Illinois on May 31, 1898, as a legal reserve company, and deposited with the insurance superintendent of the State of Illinois securities the face value of which was equal to \$100,000, which were to be held as a guaranty to policy holders that the terms of the policies issued to them by the People's Insurance Company would be complied with as provided for under chapter 73, Revised Statutes of Illinois.

Third. On July 5, 1898, the two companies heretofore referred to consolidated and merged into one company, the People's Insurance Company not having up to this time issued any policies of insurance. The reorganization of these two companies was made, and the Franklin Life Insurance Company was the name adopted for the new corporation. All of the policy holders in the old Franklin Life Insurance Company doing business on the assessment plan were allowed to exchange their policies of insurance to any of the forms issued by the reorganized company. In other words, they were allowed to change their insurance from assessment insurance to insurance written upon any one of the old-line company plans.

And the question is submitted, Are these new policies subject to taxation?

In reply, I have to inform you that I am of the opinion that no taxation accrues under these circumstances unless new insurance is written. If a policy holder in the old company, holding a policy for \$5,000, exchanges it for a policy in the reorganized company, for the same amount, no new insurance has, in my opinion, been written, nor has any taxable assignment of a policy of insurance been made.

While the above is not technically reinsurance, it is yet not the writing of new insurance.

In a letter from T. C. Roseberry, secretary of the Franklin Life Insurance Company, under date of June 9, he informs me that when old policies have been exchanged for new ones in the reorganized company these new policies have indorsed thereon the fact that they are issued in lieu of old policies in the former company, which policies were duly stamped or were not subject to taxation (having been issued prior to the passage of the war-revenue act), according to the circumstances attending each particular case. It is proper and necessary that such indorsements should be placed upon the policies issued by the reorganized company; otherwise it would be impossible to state from the face of the policy whether it represented new insurance or not.

If by the exchange of these policies the insurance is increased, the policy should have stamps affixed on a basis of the increased insurance, but if no increase is made, the policy holder simply receiving the insurance in the same amount, but on a different plan, no taxation will accrue as herein stated. * * *

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. JAMES W. MCGINNIS, *Revenue Agent, Chicago, Ill.*

(207.)

Schedule A—Life insurance policies.

Exemption of fraternal and beneficiary life associations from tax on their policies or certificates.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 5, 1900.

The following correspondence is published for the information of internal-revenue officers.

G. W. WILSON, *Commissioner.*

BOSTON, *August 27, 1900.*

SIR: Representatives of the National Fraternal Congress are in session here in Boston, and desire to know by telegraph whether or not any decision affecting the taxation of policies or certificates issued by these societies has been rendered by you during August, and if so, cause a copy of such ruling to be mailed immediately in addition to telegraph.

Respectfully,
Hon. G. W. WILSON, *Commissioner.*

JAMES D. GILL, *Collector.*

WASHINGTON, D. C., *August 29, 1900.*

No ruling has been made during August or recently by this office affecting the taxation of policies or certificates of life insurance issued by fraternal or beneficiary societies, such as the Ancient Order of United Workmen and kindred organizations.

This office has always ruled that such organizations were exempt under the law, and does not contemplate imposing any taxation on their policies or certificates.

G. W. WILSON, *Commissioner.*

JAMES D. GILL, *Collector of Internal Revenue, Boston, Mass.*

(208.)

Stamp tax—Policies of installment accident insurance.

The stamp under the war-revenue act must be affixed to the policy of insurance, and not to the application.

The amount of tax is to be ascertained by the aggregate of the premiums for the entire year.

[Opinion of Attorney-General.]

DEPARTMENT OF JUSTICE,
Washington, D. C., September 5, 1900.

SIR: I have the honor to acknowledge the receipt of your letter of December 2, 1898, transmitting a copy of a letter of the Commissioner of Internal Revenue dated November 30, 1898, in which you request my opinion as to the proper method of stamping certain applications and policies of installment accident insurance issued by the Travelers Insurance Company. You state that the party desiring the insurance makes a written application to have the policy written for four consec-

utive periods of two, two, three, and five months, respectively, each being covered by a distinct premium to be paid, respectively, from his wages. He simultaneously gives an order upon the paymaster of the corporation by which he is employed, whereby he assigns a sufficient sum from his wages to pay these four premiums. After receiving the application, the Travelers Insurance Company issued a single policy to the insured for the principal sum mentioned as the full amount of insurance in the application. The application expressly stipulates that "the policy shall embrace four separate insurance contracts, and shall remain in force after the first insurance period only as continued by payments of premium for the consecutive periods following," and the assignment blank contains the statement that "the payments named in this assignment are premiums for separate and independent contracts for consecutive periods of two, two, three, and five months; and each shall apply only to its corresponding insurance period." The insurance company claims the right to affix the revenue stamps required by the act of June 13, 1898, upon the application instead of the policy, and it contends that the amount of the stamp shall be determined separately for each of the four successive periods during which the contract runs. The Commissioner of Internal Revenue, on the other hand, has ruled that, although the payments are made in installments, the entire amount of the premium is and has been fully determined at the time of issuing the policy, and, as the policy is for a stated period and a fixed premium, it should be stamped when delivered for the four terms of insurance included therein.

Two questions, therefore, are suggested by your inquiry :

1. Should the stamp required by the act of June 13, 1898, be affixed to the policy of insurance, or to the application for such policy?
2. Should the amount thereof be such as is required by the entire premiums to be paid during the period of one year for which the policy of insurance runs, in the aggregate, or may the stamp duty be divided into four parts and separately affixed with each successive payment during the periods in question?

As to the first question, I would advise you that the act of Congress requires a stamp to be affixed to the "policy of insurance, or other instrument, by whatever name the same shall be called." It is true that in the present case the application is expressly made a part of the policy, and it is, therefore, true that the application and assignment of wages do form a part of the entire contract of insurance. Nevertheless, the term, "policy of insurance," as used in the act of Congress, is a technical word with a well ascertained meaning, and ordinarily applies to the specific instrument by which the company agrees to pay a certain amount upon conditions therein stated. The application does not of itself insure, and a policy of insurance may not be granted as applied for. To the extent that its statements, if false, may invalidate the policy it forms a part of the contract of insurance, but it is not commonly

regarded as the policy, but only an instrument of writing preceding and accompanying it. I am, therefore, of opinion that Congress intended that the stamp should be affixed to the policy of insurance and not to the preliminary application.

As to the second question, there can no longer be any doubt in view of the case of *Buckalew v. United States* (102 Fed. Rep., 320), in which the circuit court of appeals for the fifth circuit decided upon facts which are precisely those set forth in your inquiry that the policy was a policy issued for one year, and that, therefore, the amount of tax to be affixed when the policy was delivered was to be ascertained by the aggregate of the premiums, even though the premiums for the entire year were payable in four installments.

Very respectfully, JOHN W. GRIGGS, *Attorney-General*.
The SECRETARY OF THE TREASURY.

MORTGAGES, COLLATERAL SECURITIES, PLEDGES, ETC.

(80.)

Stamp tax—Pledging of collateral securities.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 21, 1900.

To collectors of internal revenue:

The subjoined opinion of the Attorney-General, relative to the pledging of collateral securities and the instruments used therein, is published for the information of all concerned.

G. W. WILSON, *Commissioner*.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 20, 1900.

The SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of yours of November 10, 1899, inclosing copy of a letter received by you from the Commissioner of Internal Revenue, in which you ask my opinion upon the two following questions:

"1. Whether the transaction detailed in his (the Commissioner's) letter is subject to tax as a pledge under the provisions of the paragraph in Schedule A headed 'Mortgage or pledge.'

"2. If your opinion should be in the negative on the first proposition, your opinion is requested as to whether stock pledged as security for loans may not properly be taxed under the first paragraph of Schedule A."

Accompanying the Commissioner's letter is a copy of an instrument, which is as follows, and which presents the facts involving the transaction upon which the opinion is desired:

"Know all men by these presents, That the undersigned, in consideration of financial accommodations given, or to be given, or continued to

the undersigned by — National Bank of the City of New York, hereby agree with the said bank, that whenever the undersigned shall become or remain, directly or contingently, indebted to the said bank for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any indorsement, draft, guarantee, or in any manner whatsoever, or upon any claim, the said bank shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise against the undersigned, or his or their executors, administrators or assigns, namely :

“1. All securities deposited by the undersigned with said bank, as collateral to any such loan or indebtedness of the undersigned to said bank, shall also be held by said bank as security for any other liability of the undersigned to said bank, whether then existing or thereafter contracted; and said bank shall also have a lien upon any balance of the deposit account of the undersigned with said bank existing from time to time, and upon all property of the undersigned of every description left with the said bank for safe-keeping or otherwise, or coming to the hands of said bank in any way, as security for any liability of the undersigned to said bank now existing or hereafter contracted.

“2. Said bank shall at all times have the right to require from the undersigned that there shall be lodged with said bank as security for all existing liabilities of the undersigned to said bank, approved collateral securities to an amount satisfactory to said bank and upon the failure of the undersigned at all times to keep a margin of securities with said bank for such liabilities of the undersigned, satisfactory to said bank, or upon any failure in business or making of an insolvent assignment by the undersigned, then and in either event all liabilities of the undersigned to said bank shall at the option of said bank become immediately due and payable, notwithstanding any credit or time allowed to the undersigned by any instrument evidencing any of the said liabilities.

“3. Upon the failure of the undersigned either to pay any indebtedness to said bank when becoming or made due, or to keep up the margin of collateral securities above provided for, then and in either event said bank may immediately, without advertisement and without notice to the undersigned, sell any of the securities held by it as against any or all of the liabilities of the undersigned, at private sale or broker's board, or otherwise, and apply the proceeds of such sale as far as needed toward the payment of any or all of such liabilities, together with interest and expenses of sale, holding the undersigned responsible for any deficiency remaining unpaid after such application. If any such sale be at broker's board or at public auction, said bank may itself be a purchaser at such sale, free from any right or equity of redemption of the undersigned, such right and equity being hereby expressly waived and released. Upon default as aforesaid, said bank may also apply toward the payment of the said liabilities all balances of any deposit account of the undersigned with said bank then existing.

“It is further agreed that these presents constitute a continuing agreement applying to any and all future as well as to existing transactions between the undersigned and said bank.

“Dated New York, the ——— day of ———, 189—.”

I think that I sufficiently answered the first question in the opinion which was rendered to you on the 21st of September, 1898. The instrument upon which the opinion was based in that case differed from

the one now under consideration in that, in the outset, that instrument contained a promissory note signed by the borrower; then stipulated in express terms that the borrower had deposited with, and pledged to, the company from which the money was borrowed, and to which the note was given, as collateral security for the payment of the note, a certain number of shares of stock described in the said instrument. Following this express pledge of the said stock as security for the payment of a definite and certain sum of money, evidenced by the said note, were further stipulations in the said instrument, substantially the same as those contained in the instrument of which the above is a copy.

In the opinion referred to, I advised you that my construction of the law led me to the conclusion that the transaction was stampable only in so far as the property described was made security for the payment of a definite and certain sum of money, to wit, that sum which was evidenced by the note which was a part of the transaction. I reiterate what I said in my previous opinion, that any mortgage or other written instrument by which property is made security for the payment of a definite and certain sum of money, lent at the time or previously due and owing or forborne to be paid, being payable, is, together with other papers relating thereto, taxable as one transaction under the paragraph of Schedule A of the war-revenue act headed "Mortgage or pledge," and the amendment thereto of February 28, 1899 (30 Stat., 1390).

I do not think it necessary to discuss the question raised in some of the briefs filed in this matter, as to whether shares of stock are "movable personal property," because the language of the statute is as follows:

"Mortgage or pledge, of lands, estate, or property, real or personal, heritable, or movable, whatsoever."

This is broad enough to include anything which is the subject of ownership, and, therefore, if shares of stock or other securities are conveyed by mortgage or other written instrument as security for the payment of a definite and certain sum of money, such transaction is taxable under the provision of the war-revenue act above cited, and the stamp or stamps required to pay the tax must be affixed to the papers, or some one of them, which constitute the evidence of the transaction. In order, however, to bring the transaction within the purview of the statute, it is my opinion that the property conveyed in the mortgage or pledge must be so definitely described therein as to be capable of identification from such description in case of foreclosure, and the amount for which the mortgage or pledge is operative must be a definite and certain sum set forth on the face of the instrument itself or made certain by reference to some other paper in which the sum secured to be paid is specifically stated, and which constitutes a part of the transaction.

If stock is hypothecated as security for the payment of money simply by the delivery of the certificates to the lender, or deposited as a basis of credit without a mortgage or other written instrument being executed or made, whereby the said stock is pledged to secure the payment of a definite and certain sum of money, it is my opinion that no tax collectible by the affixing and cancellation of an adhesive documentary stamp can be imposed.

The taxes provided for under Schedule A of the war-revenue act are stamp taxes, and the method provided for the collection of said taxes is by the affixing of stamps to instruments, papers, or documents, and for this reason the stamps issued for the payment of taxes under Schedule A are called "documentary stamps."

In section 6 of the war-revenue act it is provided :

"That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same."

* * *

It will be seen that by this provision the tax is levied in respect of the things described themselves, or of the vellum, parchment, or paper upon which they are written or printed. I see no provision which indicates that any tax is imposed upon anything which is not written or printed, and, the tax being collectible through the instrumentality of adhesive stamps, the statute contemplates that such stamps shall be affixed to the vellum, parchment, or paper upon which the instruments are written or printed.

And, further, in section 7 it is enacted :

"That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor," etc.

Now, what constitutes the offense under this section? Undoubtedly, it is the making, signing, or issuing, or causing to be made, signed, or issued, of instruments, documents, or papers, without the same being duly stamped, or without having thereupon—that is, on the instrument, document, or paper—an adhesive stamp to denote the tax.

Section 14 of the act provides that :

"No instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, * * * shall be recorded or admitted, or used as evidence in any court," etc.

And section 15 forbids the recording or registration of any instrument or paper or document required to be stamped unless the stamp is affixed and canceled. Section 16 is to the effect that no instrument, paper, or document required by law to be stamped shall be deemed or held invalid and of no effect for the want of a particular kind or description of stamp designated for and denoting the tax on such instrument, paper, or document, provided a legal documentary stamp or stamps denoting the necessary tax shall have been duly affixed and used thereon.

There are certain transactions upon which a tax is imposed under the provisions of the war-revenue act, in which the act itself requires the making of the instrument or paper to which the stamp is to be affixed. For instance, as to common carriers, the law provides that when goods are accepted for transportation, a bill of lading shall be given by the carrier, and upon this bill of lading a 1-cent stamp shall be affixed, and it is made a misdemeanor not to give the bill of lading, and also a misdemeanor to give the bill of lading without the stamp. Also in case of sales or agreements of sale, or agreements to sell any products or merchandise at any exchange or board of trade or any similar place, the seller is required to make and deliver to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, and the stamp denoting the payment of the tax is to be

affixed to this. A similar provision will be found in the case of an agreement to sell stock, or where the transfer is by the delivery of the certificate assigned in blank. The seller is required to deliver to the buyer a bill or memorandum of the sale with stamp affixed.

There is a further provision in regard to the sale of stocks, that where the transfer is made upon the books of the company, then the stamp must be placed upon the transfer entry on the book, and where the change of ownership is evidenced by the transfer certificate, the stamp shall be affixed to the certificate.

I have cited these various provisions and requirements in the war-revenue act in order to show that wherever a documentary tax, to be paid by the use of an adhesive stamp, is provided for, it contemplates the making, signing, or issuing of some instrument or paper to which the stamp can be attached.

There are certain instruments and papers required by the war-revenue act to be stamped, if such instruments or papers are made or executed; but there is no provision of the law requiring them to be made. For example, if A loans to B \$1,000 and B gives a note for it, he is required to affix revenue stamps to the value of 20 cents. But if A lends him the money and does not elect to take a note, then B does not have to pay the tax. The same may be said of a lease or contract for the hire of land. If the lease is in writing, then a documentary stamp must be placed upon it; but there is no law which requires the lessor to put the lease in writing; he can make an oral lease, if he sees proper, and thereby escapes the payment of the tax.

I, therefore, conclude that no tax collectible by the use of an adhesive documentary stamp can be imposed, unless an instrument, paper, document, or writing, falling within some one of the descriptions given in the act, is executed, made, signed, or issued to which the stamp denoting the payment of the tax is to be affixed. The paper under consideration does not in my opinion meet the requirements necessary to constitute a mortgage or pledge such as is taxable under that head in the war-revenue act. It does not convey or pledge any property, capable of identification from the paper itself, nor is any property, so far as appears in the paper, made security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable.

In your second question you inquire whether stock pledged as security for a loan may not properly be taxed under the first paragraph of Schedule A, which is as follows:

"Bonds, debentures, or certificates of indebtedness issued after the first day of July, anno Domini eighteen hundred and ninety-eight, by any association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents, and on each original issue, whether on organization or reorganization, of certificates of stock by any such association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents, and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale *whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock*, on each hundred dollars of face value or fraction thereof, two cents: *Provided*, That in case of sale where the evidence of transfer is shown

only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers."

The Commissioner in his letter calls particular attention to the following language in the above paragraph: "*or by any delivery*," or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents;" and asks if the delivery of certificates of stock to secure the future payment of money is not a taxable transaction under this provision.

My opinion is that it would be if the delivery of the stock was accompanied by any paper or agreement or memorandum or other evidence of transfer such as contemplated by the statute. But I can not construe this act to mean that the mere hypothecation of certificates of stock by depositing the same without any written or printed instrument of hypothecation, although the same may be held as security for the payment of a loan or taken as a basis of credit, is subject to stamp tax.

The language of this paragraph is involved, and presents difficulties of construction which are insurmountable if we attempt to give a clear and precise meaning to every clause. The rule of construction in tax laws is that if there is doubt as to the liability of any instrument or other thing to taxation, the construction is in favor of the exemption, because a tax can not be imposed without clear and express words for that purpose. (*United States v. Isham*, 17 Wall., 503.)

An analysis of the language under consideration reduces the provision which is supposed to cover the deposit of stock certificates as security for loans to this:

"On all sales * * * made * * * by and delivery * * * to secure the future payment of money * * * on each hundred dollars of face value, * * * two cents."

The subsequent language of the proviso indicates that the kind of sales intended is such only as possesses the incident of a definite price:

"And in case of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers."

This would not be applicable to mere deposits of stocks to remain as collateral for indebtedness, where no price is fixed, and where there is in no sense a sale effected. There is nothing in the act requiring an appropriate memorandum of a mere deposit of that kind, and in the absence of such a memorandum in writing, there is no subject of taxation clearly and definitely indicated by the act, and hence the transaction will not, under the rule above cited, be taxable.

Aside from this, we have a right to assume that the Legislature intended to use the term "delivery" in its legal technical sense.

Chancellor Kent, in his Commentaries (vol. 2, page 439), says, in treating of the subject of delivery :

"If the thing given be a chose in action, the law requires an assignment, or some equivalent instrument, and the transfer must be actually executed."

And in Bouvier's Law Dictionary it is said :

"To constitute a legal delivery it is necessary that all present and future dominion over the thing delivered pass from the person making the delivery."

In my opinion, it is entirely consistent with the provisions of the act under consideration to apply this meaning to the term "delivery" and to hold that, in order to constitute a stampable transaction, the delivery of certificates of stock must be accompanied by some assignment, transfer, or agreement, in writing, such as is described in the statute.

Very respectfully, JAS. E. BOYD, *Assistant Attorney-General*.

Approved : JOHN W. GRIGGS, *Attorney-General*.

(83.)

Stamp tax on loans secured by pledges of collateral under Schedule A, act of June 13, 1898.

[Int. Rev. Circular No. 560.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 29, 1900.

To collectors of internal revenue :

The following rulings, with regard to internal-revenue taxation on loans secured by pledges of collateral under Schedule A of the war-revenue act of June 13, 1898, are in accordance with the late opinion of the honorable Attorney-General, dated March 20, 1900 (see TREASURY DECISIONS, internal-revenue ruling No. 80), and are published for the information and guidance of collectors of internal revenue and all others interested :

1. Any promissory note, whether given for a call loan or any other indebtedness, and whether payable on demand or on time, requires to be stamped at the rate of 2 cents for each hundred dollars of face value, or fractional part thereof. Interest accrued, or to accrue, on a promissory note forms no part of the face value of such note in determining the amount on which tax is to be computed. Each renewal of a promissory note requires stamping at the same rate as an original note, and payment of interest in advance on a matured note is considered to be a renewal of the same.

2. Pledges of stocks, bonds, etc., as collateral security for the payment of loans, are liable to tax under the provisions of that paragraph of Schedule A headed "Mortgage or pledge," at the rate of 25 cents for each \$500 or fractional part thereof in excess of \$1,000.

"If stock," however, "is hypothecated as security for the payment of money simply by the delivery of the certificates to the lender, or deposited as a basis of credit without a mortgage or other written instrument being executed or made, whereby the said stock is pledged to secure the payment of a definite and certain sum of money," no tax is imposed on such transaction.

3. As modifying the foregoing rulings to a certain extent, attention is called to the amendment of February 28, 1899, to the war-revenue act, which is in the following language :

Whenever any bond or note shall be secured by a mortgage or deed of trust, but one stamp shall be required to be placed upon such papers : *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments, or either of them.

A pledge of stock or other personal property has been ruled to be within the purview of the above amendment, so that when a promissory note or bond is secured by an instrument of pledge but one tax accrues, and that tax is the higher required on either instrument. Stamps representing this higher tax may be placed on either instrument, as parties may elect.

G. W. WILSON, *Commissioner*.

(84.)

Stamp tax—Assignments of mortgages.

The tax on an assignment of a mortgage is reckoned upon the amount secured by the assignment at the time it is executed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 30, 1900.

SIR: This office is in receipt of your letter of the 26th instant, in which you state the following :

A mortgage of \$5,000 is assigned by A to B. At the time of the assignment there was \$600 interest due on the mortgage. B pays A for the mortgage \$5,600. This amount is named in the assignment of the mortgage as the consideration for the transfer.

Should the tax be based upon the original principal of the mortgage, \$5,000, or should it be based upon the consideration of the transfer, namely, \$5,600, which includes \$600 of interest on the mortgage?

In reply, you are advised that this document should be stamped on a basis of \$5,600. This office holds that a tax accrues upon an assignment of a mortgage based upon the amount of money remaining secured by said assignment ; in other words, the assignment is taxable in the same amount as would accrue were a new mortgage made at the time instead of an assignment.

Respectfully,
Mr. DANIEL FINN, *Middletown, N. Y.*

G. W. WILSON, *Commissioner*.

(243.)

Stamp tax—Assignments of mortgages, leases, and policies of insurance.

A tax accrues on every assignment of a mortgage based upon the amount of money remaining secured thereby; on a lease based upon the unexpired term; on a policy of life insurance based upon the amount of insurance remaining in force under the assignment, on a fire, marine, and casualty insurance policy based upon the unearned premium.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., November 18, 1900.

SIR: I have to acknowledge the receipt of your letter of the 9th instant, in which you asked to be advised whether revenue stamps are required upon an assignment of a mortgage, executed and delivered subsequent to July 1, 1898, the mortgage having been issued and recorded prior to that date and therefore not taxable.

In reply, you are advised that such an assignment is taxable. Every assignment or transfer of a mortgage, lease, or policy of insurance, is subject to taxation and the tax accrues as an assignment on the day that the assignment is issued, and it accrues without respect to the question whether or not the original mortgage was taxable because of its having been issued prior to July 1, 1898. The law states that the rate on the assignment is the same as that imposed on the original instrument, and this means not that the original instrument must have been issued subsequent to the day when the war-revenue act took effect and, therefore, taxable, but the rate which is fixed by the requirements of the act on such original instruments. This is for the purpose of ascertaining the rate of taxation applicable, not the fact that the original should or should not have been stamped.

It is, therefore, held by this office that when a mortgage, a lease, or a policy of insurance is assigned or transferred subsequent to July 1, 1898, a tax accrues, and it is one that would accrue on an original instrument, if executed, instead of an assignment of an original instrument. The rate is one fixed by the law on the original instruments, respectively. Therefore, when a mortgage is assigned, a tax accrues based upon the amount of money remaining unpaid at the time of the assignment, and the rate is the one applicable to mortgages or pledges, as set forth in the paragraph in Schedule A relating to mortgage or pledge.

When a lease is assigned, the assignment is based upon the unexpired term of the lease, according to the rate set forth in the paragraph in Schedule A relating to leases.

When a policy of life insurance is assigned, a tax accrues based upon the amount of insurance in force at the time of the assignment, at the rate set forth in the paragraph in Schedule A relating to life insurance.

The tax on fire, marine, and casualty insurance is one based upon the premium, and when one of these instruments is assigned a tax accrues based upon the unearned premium at the time of the assignment, for it

is considered that this is the amount of premium necessary to effect such insurance for the term covered by the assignment. Therefore, the tax on this insurance should be computed upon the unearned premium at the rate applicable to these policies, as set forth in the paragraphs in Schedule A relating to these instruments.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. JAMES DEMAREST, *New York, N. Y.*

POST STAMPING OF INSTRUMENTS AND DOCUMENTS.

(90.)

Post stamping instruments.

As to the method of post stamping instruments after twelve months from date of issue, and dissenting from opinion of Judge Edward Stake, of the fourth judicial circuit court of Maryland, that a retroactive intention is not expressed in the act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 3, 1900.

SIR: Yours of the 26th ultimo is received, in which you refer to Treasury decision 21539 as to post stamping instruments after twelve months, and ask whether in such cases the cash should be taken and reported on Form 58, or the person presenting the instrument be allowed to affix the stamp, and in the latter case who shall cancel the stamp?

The issuer of the instrument or party in interest should purchase, affix, and cancel the stamp. You have no duty in such case except to supply the stamp in return for the purchase price. It would be a superfluous act for you to note on the instrument that the tax has been paid, but the penalty has not been remitted, and the instrument is not validated.

I note what you say as to the hardship of the law in imposing a penalty of \$10, which can not be remitted after twelve months; that if the law could be amended so as to impose a penalty of double the tax it would be desirable.

You state that a number of farmers have brought unstamped deeds to you which only required a 50-cent stamp. You would like to be able to advise them that they can avoid the penalty by paying the stamp tax on the old deeds and have new deeds executed and properly stamped.

So far as concerns the Government, no objection could be made to the course suggested in any case where the omission of the stamp was without fraudulent intent. In such cases, as stated in Treasury decision 21539, the stamp tax will be accepted, and if the holder of the instrument is satisfied to allow it to remain invalid, it is not the concern of the Government. Such invalidity is a sufficient penalty of itself for the omission to stamp at time of execution. The new instrument, of course, if stamped when executed, incurs no penalty. The grantee or mort-

gagee should, however, consider the possibility of an adverse right being acquired in good faith between the dates of execution of the first and second instruments. The law specifically protects such right by the last proviso to section 13 of the act of June 13, 1898. Except for such possibility, the second proviso to the section declares that the instrument, post stamped within twelve months in the manner prescribed, "may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped." These words plainly imply the intention of Congress that an instrument validated in accordance with law should have full force and effect from date of execution, save for any right acquired in good faith before stamping. There was reason why this intent should have been entertained and specifically expressed. The act is a revenue measure, and Congress undoubtedly took into consideration human infirmities, through which there would be inadvertent omissions to stamp instruments. A way was provided, therefore, for the correction of such omissions and the complete validation of the instruments in all respects as if the omission had not occurred, which was demanded by every consideration of justice and sound policy.

This office does not accept the decision of Judge Stake, of the Maryland State court (printed in TREASURY DECISIONS, ruling No. 53, March 1, 1900), as sound law, although it is apparently in the interest of the Government. It is believed to be defective because founded upon the erroneous proposition that a retroactive intention is not expressed in the act of June 13, 1898, section 13.

Respectfully,
 Mr. JOHN C. LYNCH, *Collector Internal Revenue, San Francisco, Cal.*

G. W. WILSON, *Commissioner.*

(94.)

Post stamping of instruments.

Duties of registers and recorders of deeds when receiving unstamped instruments for record.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 12, 1900.

SIR: Your letter of the 9th instant is received, in regard to deeds and other instruments sent to you for record, not stamped or not sufficiently stamped. You say that the grantee often sends you a deed requesting you to attach revenue stamps, which, of course, you can not do; that the grantor often can not conveniently get the stamps. You state that you have been put to trouble and expense of postage in correspondence made necessary by such omissions. You ask if you would be justified in recording a deed which is not stamped, leaving the grantee to take his chances.

In reply, I have to say I do not think you would be justified in

admitting such instruments to record. Section 14 of the war-revenue act provides that no instrument required by law to be stamped, from which the proper stamp is omitted, shall be recorded, or used as evidence in any court, until properly stamped. Section 15 declares that it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper denomination shall have been affixed and canceled in the manner prescribed by law; and the record of unstamped instruments, if made, shall not be used in evidence.

The grantor, or person who makes or issues the instrument, is the proper person to affix and cancel the stamp. If he omits to do so, he incurs a penalty of not more than \$100 under section 7 of the act; but if the omission is inadvertent, he may, under section 13, present the instrument to the collector within twelve months from date of issue, pay the stamp tax, and the collector may then affix and cancel the stamp and remit the penalty of \$10. The grantee may also pay the stamp tax, if he chooses, and present the instrument for post stamping.

This office would advise that when you receive an unstamped instrument for record which is subject to stamp tax you return it to the sender to be stamped as the law requires; and, in stating the amount of your fee, it would seem that you would be authorized to include whatever amount is necessary to reimburse you for postage and time occupied in the correspondence made necessary by the omission of the stamp. If this practice is adopted, you will avoid the personal loss complained of, while at the same time preventing a possibly much greater loss to grantees which might occur through admitting an invalid instrument to record.

Respectfully,
Mr. HENRY F. ABBOTT, *Register of Deeds, Ossipee, N. H.*

G. W. WILSON, *Commissioner.*

(166.)

Penalties for failure to stamp instruments, documents, etc.

Collectors may remit such penalties in certain cases.—Commissioner of Internal Revenue can not remit such penalties nor refund them when collected with authority.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., June 28, 1900.

SIR: The claim of—— for the refunding of \$10, penalty paid for failure to stamp a certificate of acknowledgment as a notary public on a deed of release, is hereby rejected.

Where penalties have been incurred for failure to stamp instruments, section 13 of the act of June 13, 1898, provides that if within twelve months after failure to stamp the instruments, the parties failing to stamp them shall bring them to the collector and pay the proper stamp charges thereon, and it shall appear to the satisfaction of the collector

that the failure to stamp the instruments was caused by accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States or to evade or delay the payment thereof, then it shall be lawful for the collector to remit the penalties aforesaid and permit such instruments to be duly stamped. There is no provision of law by which the Commissioner of Internal Revenue can remit such penalties or refund them when collected with authority.

Respectfully,
 Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

G. W. WILSON, *Commissioner.*

(197.)

Post stamping instruments under Schedule A, act of June 13, 1898.

Explanation of last paragraph of Treasury decision 21539, dated August 25, 1899.

TREASURY DEPARTMENT,
 OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 13, 1900.

SIR: I have your letter of the 4th instant, referring to the last paragraph of Treasury decision 21539, dated August 25, 1899, relative to post stamping instruments, and asking for instructions thereunder.

The paragraph is as follows:

Collectors are instructed that in cases of nonwillful omission to stamp instruments, arising after twelve months from date of issuance of the same, where the parties interested wish to avoid the payment of penalty, no other or further action on the collector's part will be expected than the collection of the stamp taxes due. No steps need be taken in such cases to enforce collection of the penalty, but no notation will be made by them on the instrument in such cases.

The above was intended to mean simply that when an unstamped instrument is brought to the collector for validation under section 13 of the act, after twelve months have expired from the date of execution, and the party holding the instrument does not wish to pay the penalty of \$10 required in order to have the same validated, there will be no objection to the collector receiving the amount of the stamp tax due on the instrument by selling the appropriate stamp, which must be affixed by the party himself thereto.

In such case the collector will not collect the penalty of \$10, and he will make no notation on the instrument or entry on Record 25 or Form 8 of the transaction. The amount received for the stamp will be entered on the record of daily sales of stamps, the same as any other sale, and no assessment reported.

This regulation was made because it was believed that there were many cases where the holder of unstamped instruments, after the lapse of the period when they could be validated by the purchase of stamps without penalty, would not care sufficiently about validating the same to pay the penalty, the document being either *functus officio* or of little

value, while, on the other hand, many would be willing to pay the unpaid tax without the penalty.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
MR. H. C. GRENNER, *Collector Internal Revenue, St. Louis, Mo.*

PROPRIETARY STAMPS.

(37.)

Regulations as to liability of medicinal preparations and perfumery and cosmetics to stamp tax under Schedule B, act of June 13, 1898.

[Circular No. 16.—Int. Rev. No. 501, revised.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 8, 1900.

The existing law governing internal-revenue taxation on medicinal preparations and perfumery and cosmetics is as follows :

SCHEDULE B.

Medicinal proprietary articles and preparations: For and upon every packet, box, bottle, pot, or phial, or other inclosure, containing any pills, powders, tinctures, troches or lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, (except natural spring waters, and carbonated natural spring waters), essences, spirits, oils, and all medicinal preparations or compositions whatsoever, made and sold, or removed for sale, by any person or persons whatever, wherein the person making or preparing the same has or claims to have any private formula, secret, or occult art for the making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines, or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, as follows :

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed, at the retail price or value, the sum of five cents, one-eighth of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of five cents, and shall not exceed, at the retail price or value, the sum of ten cents, two-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of ten cents, and shall not exceed at the retail price or value the sum of fifteen cents, three-eighths of one cent.

Where each packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of fifteen cents and shall not exceed the retail price or value of twenty-five cents, five-eighths of one cent. And for each additional twenty-five cents of retail price

or value, or fractional part thereof, in excess of twenty-five cents, five-eighths of one cent.

Perfumery and cosmetics and other similar articles: For and upon every packet, box, bottle, pot, phial, or other inclosure containing any essence, extract, toilet water, cosmetic, vaseline, petroleum, hair oil, pomade, hair dressing, hair restorative, hair dye, tooth wash, dentifrice, tooth paste, aromatic cachous, or other similar substance or article, by whatsoever name the same heretofore have been, now are, or may hereafter be called, known, or distinguished, used or applied, or to be used or applied, as perfumes or as applications to the hair, mouth, or skin, or otherwise used, made, prepared, and sold or removed for consumption and sale in the United States, where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed at the retail price or value the sum of five cents, one-eighth of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of five cents, and shall not exceed the retail price or value of ten cents, two eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of ten cents, and shall not exceed the retail price or value of fifteen cents, three-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of fifteen cents, and shall not exceed the retail price or value of twenty-five cents, five-eighths of one cent. And for each additional twenty-five cents of retail price or value or fractional part thereof in excess of twenty five cents, five-eighths of one cent.

Section 20, act of June 13, 1898, contains important provisions modifying and interpreting Schedule B, as follows:

Sec. 20. That on and after the first day of July, eighteen hundred and ninety-eight, any person, firm, company, or corporation, that shall make, prepare, and sell, or remove for consumption or sale, drugs, medicines, preparations, compositions, articles, or things, including perfumery and cosmetics, upon which a tax is imposed by this Act, as provided for in Schedule B, without affixing thereto an adhesive stamp or label denoting the tax before mentioned shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That no stamp tax shall be imposed upon any uncompounded medicinal drug or chemical, nor upon any medicine sold to or for the use of any person which may be mixed or compounded for said person according to the written recipe or prescription of any practicing physician or surgeon, or which may be put up or compounded for said person by a druggist or pharmacist selling at retail only. The stamp taxes provided for in Schedule B of this Act shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-mark, or proprietary medicine in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use, or effect.

GENERAL REMARKS.

The word "medicinal," as usually defined by the lexicographers, is applicable to any substance fitted to cure or alleviate disease or pain. Therefore, a medicinal preparation is a preparation of any substance whatever to be applied for the cure or mitigation of pain or disease. It may be an article of *materia medica*, but it is not necessarily such. Many articles or substances which are not usually considered as belonging to *materia medica* may become taxable medicinal articles by being held out and specifically advertised as remedies for any disease affecting the human or animal body. In this way certain articles usually regarded in the class of foods or beverages may be placed in the category of taxable medicinal preparations. Soaps may also be placed in the category of taxable articles by being advertised as remedies or cosmetics. On the other hand, medicines *per se* are not taxable at all. It is only the style or manner of putting them up that makes them taxable.

EXEMPTIONS.

Section 20 above quoted makes three absolute exemptions from the stamp tax imposed by Schedule B, as follows:

1. No stamp tax shall be imposed upon any uncompounded medicinal drug or chemical.
2. No stamp tax shall be imposed upon any medicine sold to or for the use of any person which may be mixed or compounded for said person according to the written recipe or prescription of any practicing physician or surgeon.
3. No stamp tax shall be imposed upon any medicine which may be put up or compounded for *said person* by a druggist or pharmacist selling at retail only.

In regard to the first exemption, the Attorney-General, in his opinion of December 22, 1898, has ruled that:

The inquiry as to what is an uncompounded medicinal drug, or an uncompounded chemical, is not, in my opinion, a question of law, but a question of fact, to be determined according to the general definition of the word "uncompounded" according to such a technical meaning as has become attached to it as a pharmaceutical or medicinal term. It is clear, however, that no tax is imposed by the act above mentioned on any uncompounded medicinal drug or chemical, no matter how put up or what is claimed for it, the same being exempted from the operations of the act by the first clause of the proviso in section 20, which is in these words, "that no stamp tax shall be imposed upon any uncompounded medicinal drug or chemical."

Judge Addison Brown, in the United States district court for the southern district of New York, has decided as a question of fact that the following articles are uncompounded drugs, viz, Aristol, Europhen, Piperazine, Protargol, Losophen, Lycetol, Phenacetine, Sulfonal, Tannigen, Tannopine, Trional, and Salophen, and, therefore, are not liable to tax under Schedule B.

It will be seen that this exemption is a question of fact in every case, to be determined either by this office or by the courts. Articles other than those mentioned above for which the uncompounded claim is made will be sent to this office by collectors or revenue agents for chemical analysis. When this claim is established the exemption is absolute, and no matter whether the article is proprietary, patent, or trade-marked, or whatever curative claim is made for it, no tax can accrue.

OPINION OF THE ATTORNEY-GENERAL.

The last clause of section 20, act of June 13, 1898, is as follows:

The stamp taxes provided for in Schedule B of this Act shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-marked, or proprietary medicine in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use, or effect.

For the construction of the above clause, special reference is made to the entire opinion of the Attorney-General above referred to, published as Internal-Revenue Circular 519 and Treasury decision 20460, dated December 22, 1898.

In the opinion above-mentioned the Attorney-General holds that there are three classes of medicinal preparations on which it was the intention of Congress to levy a tax, viz:

1. Proprietary medicinal articles, or such as assume the character before the public of proprietary, patent, or trade-mark articles.

2. Such medicinal articles as go from the hands of the proprietor, compounder, or manufacturer, so put up in packages as to comport with the manner and style of patent, trade-mark, or proprietary medicines in general.

3. Where medicinal articles, though not put up in the usual style of patent, trade-mark, or proprietary articles in general, still have the characteristics of patent, trade-mark, or proprietary articles to the extent that they are advertised on the package or otherwise as specifics or remedies for certain ailments, or have claims to special merit or advantage in mode of preparation, quality, use, or effect.

The Attorney-General calls attention to a class of medicinal preparations which, in his opinion, are not taxable. "They are articles which are put up in bottles, phials, or other packages, *more particularly for the use of physicians and pharmacists.*" They are such articles as *anti-streptococcic serum*, *antidiphtheritic serum*, *antitetanic serum*, and many others of like character.

These articles are not put up in the manner and style of patent, trade-mark, or proprietary medicines in general, nor are they advertised to the public upon the package or otherwise as specifics or remedies for particular diseases, or as claiming special merit, etc. The *names* upon the bottles, phials, or other packages containing the preparations are

simply medicinal or pharmaceutical designations used to indicate the class of medicines to which they belong, and are for the guidance of physicians and pharmacists, and under their direction to be used by the consumer. The Attorney-General also includes under this head such medicinal articles as *Pil. Migraine, Pil. Neuralgia, Comp. Tablets Anti-Malarial*, and medicines of similar classes put up in quantities, in bottles or other packages for the use of physicians, druggists, and pharmacists, through whom they are dealt out to consumers as prepared prescriptions. These articles have the technical medical name upon the bottle or other package, and also the formula by which they are prepared. There is no exclusive proprietorship or right of manufacture claimed in them, but any pharmacist or manufacturing druggist has the right to make them after the formula given, and there is no retail price or value stated on the bottle or other package containing them.

The Attorney-General further states that, in his opinion, the provisions of the act do not reach "*such medicinal articles or preparations as are put up under pharmaceutical or classifying names for the use of physicians in their practice, and pharmacists or druggists in their trade.*"

In illustration of the foregoing, the Attorney-General cites the case of the preparation of calomel, for which special merit is claimed in the treatment of diseases like bilious fevers, hepatitis, etc. In the case mentioned the calomel is not taxable under the provisions of the war-revenue act, he states, "for the reason that it is not put up in the manner and style of patent, trade-mark, or proprietary medicine in general, and in the second place it is not advertised on the package in which it is put up, as contemplated by the act, and even if the manufacturer or compounder were to put on the inclosure containing the calomel the additional words, '*Antibilious*' or '*Antih hepatitis*,' it would, in my opinion, only have the effect to designate more particularly the class of medicines to which it belongs and not to advertise it as a specific or remedy for a particular disease."

The result of the Attorney-General's opinion, as understood by this office, seems to be that medicinal articles not otherwise taxable, which are put up primarily for the use of physicians, druggists, and pharmacists, through whom they are dealt out to consumers as prepared prescriptions, may have the name of the disease for which they are to be used indicated on the label, either by the technical medicinal name, or otherwise stated thereon in technical language not in common use, without incurring the inhibition of the statute against advertising, and it is so ruled.

In addition to the above, this office rules that in such cases there may appear on the label the formula (which may be followed with the name of the physician who was the author thereof), the dose, and words indicating the therapeutic action, stated in technical language, without subjecting the article to taxation.

CLAIMS OF SUPERIOR MERIT.

Any medicinal article will be held to be advertised on the package or otherwise as having any special claim to merit, or to any peculiar advantage in the mode of preparation, quality, use, or effect, when any description of it, either on the package or otherwise, includes any statement to the effect that it has a special or peculiar merit or value over other like articles, or other articles of the same class; or when it has any word, phrase, or sentence, either in the title or formula, or otherwise, which indicates its superior merit over articles of its class.

OBJECT OF THE LAW.

The object of the law is tax :

1. All remedies and medicinal preparations whose names are not free to all manufacturers.
2. All remedies and medicinal preparations not free to all where the possessive case is used.
3. All trade-mark medicinal preparations.
4. All patented medicinal compounds.
5. All druggists' popular cures for disease.
6. All nonsecret remedies.
7. All advertised cures.
8. All medicines furnished by advertising physicians, companies, or institutes, the demand for which is created by advertisement.
9. All medicinal mineral waters, excepting natural spring and carbonated natural spring waters.
10. Perfumery, cosmetics, dentifrices, etc.

SUBJECT TO TAXATION.

1. All remedies having a retail price on the bottle or package, whether sold under a fanciful title, botanic, or other scientific name, provided their names or titles are not free to all manufacturers.
2. All remedies whose titles are in the possessive case and not free to others, whether they are sold under a fanciful title or the true botanic or other scientific name of the drug. Example: "Helmbold's Buchu," "Smith's Tonic Sirup."
3. All trade-mark medicinal preparations, soaps, plasters, etc.
4. All patented medicinal preparations or mixtures.
5. All remedies made by druggists or others and sold in special or unbroken packages, and recommended for the cure of disease without the intervention of a physician's prescription. These may include official and unofficial compounds and mixtures, lotions, hair preparations, medicinal soaps, etc., provided they are advertised to the public by circular or other print as remedies for disease or any ailment whatever, or if directions are given on the label that might prompt self-medication. Example: "The Real Thing," for coughs, colds, grippe, etc.

6. All preparations known as "nonsecret remedies," whether they may be in imitation of well-known proprietary remedies or are of original design, and whether made by the druggist or manufactured for him, whether they are advertised in public (*a*) print or are recommended and sold to the consumer direct. These include all nonsecret remedies for use externally or internally, and all lotions, liniments, medicinal soaps, etc. Example: "Major's Extract of Sarsaparilla, Red Clover, Stillingia, with Iodides."

7. All remedies or preparations advertised in any public (*a*) print, such as newspapers, by handbill, circular, poster, or public sign, and recommended to alleviate any ill whatever, whether the use be by internal administration or external application. These include ointments, cerates, plasters, lotions, liniments, emulsions, sirups, tinctures, extracts, pills, tablets, lozenges, medicated soaps, powders, and compound drugs, or any medicament whatever, that is put up in packages and directed to be used by the consumer by public advertisement or according to directions given on the label and advertised as above.

8. All mixtures or compositions whatsoever, of a medicinal character, prepared from private formulæ, by advertising physicians, companies, or institutes, or by others in their employ, that are furnished to patients solicited by means of advertisement of their ability to cure certain diseases incident to man, are subject to the tax, as the remedies so furnished must be considered to be the means by which such cures are effected, and although their remedial properties may not be given on the package, they *are otherwise* advertised, and thus come within the purview of the statute.

9. All medicinal mineral waters, excepting natural spring and carbonated natural spring waters, that are advertised on the label or otherwise held out as a specific remedy for any disease are subject to the tax. When certain medicinal waters are claimed by the dealer to be natural spring or carbonated natural spring waters, and there is reasonable ground for the supposition that they are not such in fact, collectors and revenue agents will cause samples to be submitted to this office for chemical analysis.

10. All perfumery and scented articles, cachous, and similar substances intended exclusively as perfume. These include sachet powder, scented medallions, papers, or other materials used to impart their odor to the breath, contiguous substances, or to the surrounding atmosphere. All preparations and compositions held out and specially recommended as adding to or enhancing the beauty of the skin, hair, teeth, mouth, or complexion. These include all face powders, rouge, hair dyes, hair oils, vaseline, petrolatum, bay rum, dentifrices, tooth paste, complexion soaps, and similar articles. Articles under the head of perfumeries and cosmetics are taxable under the statute, regardless of the style and

a Open to common use. The general body of mankind; the people indefinitely.—*Webster*.

manner in which they are put up and sold. In other words, it is immaterial how they are labeled, recommended, or advertised, or whether they are labeled at all, so long as they are known to come within the provisions of the law.

BULK PACKAGES.

Articles subject to stamp tax under Schedule B, act June 13, 1898, are equally liable to stamp tax when sold in what are termed bulk packages as when sold in retail packages, and the value of the stamp or stamps to be affixed must correspond with and be proportionate to the price of a single retail package.

Dealers may retail directly to the consumer from such bulk packages as have been properly stamped by the manufacturer or importer, drawing from the same in quantities to suit their customers without any additional stamping, but the stamps attached to such bulk packages will only protect the original contents.

If bulk packages are broken up by the dealer drawing off the contents into smaller vessels to be put upon his shelves, or otherwise kept for future sales, the contents so drawn off thereby cease to be identified with the stamped package in which they were originally put up by the manufacturer or sold by the importer, and such contents so put up become liable to seizure if stamps are not affixed to them.

The contents of bulk packages, liable to tax under Schedule B, which were in the hands of retailers on the first day of July, 1898, and therefore unstamped, must be stamped when sold at retail from said packages proportionately to the retail price of the whole package.

UNCLARIFIED PETROLATUM AND OTHER INCOMPLETE MANUFACTURES SHIPPED IN BULK.

While the act of June 13, 1898, specifically provides that the stamp taxes shall apply to petrolatum, it is held to be the intent of the statute to impose the tax mainly upon the clarified product. The unclarified is an unfinished product requiring to be treated with heat and otherwise manipulated before it will be accepted by manufacturing druggists as a basis for various ointments, or drawn off into small packages and sold as vaseline, and may be shipped in bulk without stamps.

If, however, the unclarified, unfinished petrolatum is sold for use by consumers, either at wholesale or retail, it is liable to the stamp tax at the same rate as the finished product.

Many articles which ultimately become taxable are not so when they are first removed from the manufacturing chemist's laboratory, but are incomplete manufactures, the process of manufacture not being completed until they are bottled, labeled, or otherwise placed in a salable condition.

This regulation particularly applies to articles manufactured for dealers, to be bottled, packed, and labeled by them, and sold under

their own names, when it becomes the duty of the wholesale or retail dealers, and not the manufacturers, to affix the tax stamps due, canceling them with their initials and the day, month, and year.

This regulation will not apply to articles such as perfumery, cosmetics, hair dressing, dentifrices, etc., specified under Schedule B as taxable.

BITTERS.

Bitters belong to the class of medicinal preparations specified under Schedule B that are dependent upon the style or manner in which they are put up and sold to determine their liability to the stamp tax under the statute. If they are patented, trade-mark, or proprietary, or if they are held out as having any remedial properties, they become taxable thereby. If, however, they are simply labeled bitters, they may be removed from the laboratory unstamped, in bulk or otherwise.

SOAPS.

Soaps are ordinarily either laundry or toilet articles. They may, however, and do become medicinal or cosmetic articles, whenever the manufacturer or vender holds them out and recommends them to the public for their curative or healing virtues or properties, or for the softening and beautifying effects produced by their use upon the hair, mouth, skin, or complexion. In other words, whenever the manufacturer or vender takes them out of the category of laundry or toilet articles and places them in the category of medicinal or cosmetic articles, he must stamp them according to the provisions of Schedule B.

Soaps may, however, be held out and recommended as antiseptic, disinfectant, and insecticidal without incurring the liability to the stamp tax.

SAMPLES.

Samples of medicinal preparations and perfumery and cosmetics, taxable under Schedule B, may be removed from the place of manufacture for free distribution, without stamps or payment of tax. Every sample so removed, however, must have legibly printed thereon the following notice:

This is a free sample removed from the factory for gratuitous distribution. Any person selling or exposing for sale this sample, unstamped, at any time will be liable to all the pains and penalties of the law denounced against persons selling, or exposing for sale, unstamped articles taxable under Schedule B, act of June 13, 1898.

But where, owing to the minute size of the sample, the above prescribed cautionary notice can not be legibly and neatly printed and affixed thereto, the following may be substituted: "Free sample. Penalty for sale, \$500."

ARTICLES ON HAND, JULY 1, 1898.

The statute governing this matter is as follows :

That all articles and preparations provided for in this schedule which are in the hands of manufacturers or wholesale or retail dealers on the first day of July, 1898, shall be subject to the payment of the stamp taxes herein provided for ; but it shall be deemed a compliance with this Act as to such articles on hand in the hands of wholesale or retail dealers, as aforesaid, who are not the manufacturers thereof to affix the proper adhesive tax stamp at the time the packet, box, bottle, pot, or phial, or other inclosure with its contents is sold at retail. (Schedule B, act of June 13, 1898.)

Under this provision it is held that articles liable to tax in the hands of a retail dealer who is not the manufacturer thereof, July 1, 1898, must be stamped by such retail dealer when he sells them at retail.

Articles liable to tax in the hands of wholesale dealers who are not the manufacturers thereof on the first day of July, 1898, may be sold by such wholesale dealers to other wholesale dealers or to retail dealers without stamping the same, the obligation to stamp being limited to sales at retail.

All articles in the hands of manufacturers on said date liable to tax must be stamped before removal from the place of manufacture.

Dealers, in stamping articles on hand July 1, 1898, when sold at retail, must adhere to the retail price as fixed by the manufacturer and stamp the article accordingly, and not according to some "cut price."

RETAIL PRICE.

The manufacturer or importer must fix the retail price or value of the taxable articles under Schedule B manufactured or imported by him, and affix the corresponding adhesive stamps to the same before removal from the place of manufacture or importation. This duty is imposed on the manufacturer or importer by law. It is believed that no one is so competent as he to determine the retail price or value of his products or importations, and he will be held strictly responsible for a due compliance with the statute.

This retail price or value is a price such as a single package or other small quantity would be sold at to consumers at the place of manufacture or importation. If the manufacturer fixes the retail price in good faith according to this rule, he need apprehend no complaint if at different times and in different places the article is retailed for a greater or less sum than denoted by the stamps affixed thereto.

Five cents being the lowest retail price mentioned in Schedule B, taxable articles retailing for a less sum may be packed together under one wrapper, band, or other inclosure, when the retail price of said package shall not in the aggregate exceed 5 cents, and a stamp of the value of one-eighth of 1 cent shall be affixed to the outside band or wrapper, or other inclosure, in such a manner that the stamp shall be wholly destroyed in opening it. In such cases each subpackage shall have printed thereon the words: "Sold from a duly stamped package."

EXPORT—ARTICLES EXPORTED WITHOUT STAMPING, AND DRAWBACK ON STAMPED ARTICLES EXPORTED.

Articles liable to tax under Schedule B, when intended for exportation, may be manufactured and sold or removed without having the stamps affixed thereto and without being charged with tax as aforesaid, by giving bond and complying with regulations to be provided by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. (See proviso to section 22, act of June 13, 1898.) An allowance of drawback on articles mentioned in Schedule B, which have already been stamped and afterwards exported, is allowed by section 26, act of June 13, 1898, which reads as follows:

Sec. 26. There shall be an allowance of drawback on articles mentioned in Schedule B of this Act on which any internal-revenue tax shall have been paid, equal in amount to the stamp tax paid thereon, and no more, when exported, to be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal taxes not otherwise appropriated: *Provided*, That no allowance of drawback shall be made for any such articles exported prior to July first, eighteen hundred and ninety-eight. The evidence that any such tax has been paid as aforesaid shall be furnished to the satisfaction of the Commissioner of Internal Revenue by the person claiming the allowance of drawback, and the amount shall be ascertained under such regulations as shall be prescribed from time to time by said Commissioner, with the approval of the Secretary of the Treasury.

Regulations made in pursuance of the foregoing provisions, entitled Series 7, No. 24, will be furnished to parties interested, on application to collectors of internal revenue.

IMPORTED ARTICLES.

All medicinal articles, and perfumeries and cosmetics, wines, etc., imported from foreign countries are liable to the stamp tax as similar articles of domestic manufacture, in addition to the import duty on the same, and the stamps must be affixed by the owner or importer before the same are sold or offered for sale, and affixed in the same manner, upon every packet, box, bottle, phial, or other inclosure containing the same.

No exception is made in this respect for articles sold in original and unbroken packages in which the bottles or other inclosures were packed by the manufacturer before the importation. All such must be unpacked for the purpose of stamping the primary package. Importers may, however, supply manufacturers abroad with internal-revenue stamps to be there affixed and canceled to the respective articles, before shipment. (See TREASURY DECISIONS, Vol. 2, 1898, No. 19594.)

COLLECTORS TO MAKE EXAMINATIONS.

Collectors and revenue agents will make examinations of the retail drug stores, pharmacies, and other places in their districts, to ascertain

if the medicinal articles and other articles mentioned in Schedule B, contained in stock and offered for sale, are stamped according to law wherever liable under the foregoing instructions.

In cases where the officer is not able to determine liability to tax, or where there is reasonable doubt, samples should be sent to this office for decision. Samples sent for this purpose should include all wrappings, circulars, advertisements, etc., pertaining to the sample in question, and should be accompanied by a letter of transmission giving full information concerning the same.

G. W. WILSON, *Commissioner*.

Approved: O. L. SPAULDING, *Acting Secretary*.

(39.)

Stamp tax—Medicinal preparations—Velvet molasses candy.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 10, 1900.

To revenue agents and collectors of internal revenue:

You are advised that all Velvet molasses candy manufactured by H. L. Hildreth, Boston, Mass., removed by him prior to December 5, 1899, without stamp, is relieved from all liability to seizure by reason of the payment of the assessment of \$5,000 to the collector of internal revenue at Boston, Mass. Therefore, revenue officers will interfere in no way with the sale of such unstamped goods. If, however, any goods received subsequent to December 5 are found unstamped with taxable features thereon, they are liable to seizure.

G. W. WILSON, *Commissioner*.

(61.)

Stamp tax—Medicinal waters.

Ruling as to the taxation of medicinal waters under Schedule B.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1900.

SIR: I have the honor to acknowledge your reference to this office of a communication under date of February 26, 1900, from Thad. C. Pound, Chippewa Falls, Wis., relating to the tax on medicinal mineral waters in general, and a certain regulation prescribed by this office, with the approval of the Secretary of the Treasury, in particular, as contained in Circular 501, revised, page 5, paragraph 9, of which the following is a copy:

All medicinal mineral waters, excepting natural spring and carbonated natural spring waters, that are advertised on the label or otherwise

held out as a specific remedy for any disease, are subject to the tax. When certain medicinal waters are claimed by the dealer to be natural spring or carbonated natural spring waters, and there is reasonable ground for the supposition that they are not such in fact, collectors and revenue agents will cause samples to be submitted to this office for chemical analysis.

It will be observed that Mr. Pound takes exception to this ruling, that medicinal mineral waters (excepting natural spring waters and carbonated natural spring waters) alone come within the purview of the statute, and asks to be informed by what authority is the word "mineral" inserted. In conclusion, he asks if distilled water is taxable.

Mr. Pound should be advised that all "waters" that are advertised as cures or specifics for any ailment come within the purview of the statute, with the exception of the exemption provided in the first paragraph of Schedule B for "natural spring waters and carbonated natural spring waters," and in section 20 for "uncompounded medicinal drugs or chemicals."

It is obvious, under the statute, that an absolute prerequisite to the imposition of the tax upon waters is that they shall be medicinal. Then there are three exemptions provided which inhibit the operation of the statute, viz, if they be natural spring waters, if they be carbonated natural spring waters, and if they be uncompounded medicinal chemicals. It follows, therefore, that waters advertised as table waters solely are not included in the taxable list.

Distilled water is ordinarily condensed from steam produced by application of heat to river, lake, or spring water, and re-collected. Such water must of necessity be practically divested, by the process of distillation, of all extraneous matter, both organic and inorganic, so that it is identical with water synthetically prepared by the admixture of oxygen and hydrogen. In other words, distilled water and water prepared by synthesis are the two, practical and theoretical, possible examples of absolutely pure water; these two alone are strictly entitled to the chemical designation H_2O .

Mr. Justice Brown, of the United States district court for the southern district of New York, in the case of the *United States v. Stubbs* (91 Fed. Rep., 608), held, in substance, that it was only necessary to show that a substance is a definite chemical having a known molecular arrangement to entitle it to the exemption provided under section 20. Applying this test to distilled water, advertised as having curative properties, it will be readily observed to exactly accord; it is a chemical entity, differing from every other known substance as well as from each of its constituent elements; its molecular arrangement is known as shown by its chemical formula, H_2O . Distilled water is, therefore, exempt, under the rule of the court, and as this office has accepted this opinion of the court as a rule governing in such case, distilled water has been held to be exempt, regardless of the remedial claims made for it or the style and manner in which it is placed on the market.

With regard to the authority for the use of the word "mineral" in Circular 501, revised, page 7, paragraph 9, it should be remembered that Circular 501, revised, is a Departmental circular, intended especially for the instruction of employees of the Internal Revenue Service, and words employed therein are those best calculated to convey the meaning intended. The word "mineral," although it does not appear in the law, is commonly used in connection with the waters that are clearly shown to be subject to the tax.

The collectors and revenue agents throughout the country are carrying on a thorough systematic investigation of the manufacture and sale of these medicinal mineral waters, with the result that many manufacturers of artificial medicinal waters are now paying the tax who formerly believed their products to be exempt. Every one of them will eventually be required to pay the accrued tax.

The Government has been put to considerable trouble in detecting certain imitations of imported medicinal natural spring waters, the tax upon which was not being paid; and, too, there has been some difficulty in ascertaining positively if some of the imported alleged natural spring waters are such in fact.

In conclusion, I am satisfied that the tax on medicinal waters in general is being paid, with a few exceptions of unadjudicated cases.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*

The SECRETARY OF THE TREASURY.

(73.)

Stamp tax—Perfumery.

Eight ounces of standard extracts held to be a retail package.—Quantities in excess to be considered bulk packages.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 15, 1900.

SIR: Your letter under date of March 8, 1900, was received. You state, that, upon investigation made by several of your deputies, it is found that perfumery is generally being placed on the market insufficiently stamped—that is to say, it is sold in 8-ounce packages, but stamped only to correspond with the price charged the retailer, and not to correspond with the price at which the retailer eventually charges the consumer. For example, an 8-ounce package of standard extract is sold to retail dealers for \$2, and is stamped only to the amount of 5 cents. It is sold by the retail dealers at 50 cents an ounce, which would make the total price paid for the package by the consumer \$4. You contend that the stamp tax should be computed upon the price charged the consumer, \$4, and not the price charged the dealer.

You are advised that in January, 1899, this office caused a thorough and systematic investigation to be made of some of the principal man-

ufacturers of perfume throughout the country—Paul Rieger, San Francisco, Dabrooks, Detroit, and Colgate, New York City, with the view of determining, if possible, the dividing line between retail and bulk packages of perfumery. The results of these investigations tended to show that it was erroneous to suppose that there is any ratio between the quantity and price of retail and bulk packages of perfume—that is to say, Paul Rieger states his 1-ounce packages of extracts are sold to dealers for 35 cents, and are ordinarily retailed for 50 cents, and are stamped to correspond with this retail price. But he goes on to show that his 8-ounce packages are sold to the dealer for \$1.40 and are retailed for \$2. It will be observed that the profit to the retailer on the 1-ounce and 8-ounce package is the same, 30 per cent. It was further shown that while dealers might, and usually did, retail from these 8-ounce packages at a price from 40 cents to 75 cents an ounce, and thus secure to themselves an increase of profit, these 8-ounce packages were nevertheless very often sold in the original packages to the consumer for \$2, and were stamped accordingly.

Packages of perfume in larger quantities than 8 ounces (pints, quarts, half gallons, and gallons), it was stated, are classed as bulk packages, and are usually sold to druggists and small manufacturers, who draw the goods off into packages containing from one-half to eight ounces. Such bulk packages are stamped according to the number of 8-ounce packages contained therein. This perfumery is of the class known as standard extracts.

In commenting upon the testimony given by Paul Rieger & Co., Dabrooks, and Colgate, the investigating officers declared it to be reliable.

I am satisfied that this office can follow no safer practice in questions affecting the sale of manufactured goods than to be guided by the expert testimony of the representative manufacturers.

With reference to standard extracts, and for the purpose of securing a uniform method of computing the tax, it is held that 8 ounces shall be considered to be the largest retail package; that quantities in excess of 8 ounces are to be considered as bulk packages. Retail packages, as heretofore, must be stamped in accordance with the price at which they are ordinarily sold to the consumer. Bulk packages must be stamped in proportion to the number of 8-ounce packages contained therein, and according to the retail price of such 8-ounce packages. It would appear, therefore, under this ruling, that the perfumery in 8-ounce packages found in your district stamped to the amount of 5 cents is properly stamped.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. W. H. POWELL, *Collector Thirteenth District, East St. Louis, Ill.*

(93.)

Purchase of proprietary stamps by stamp collectors.

Proprietary stamps furnished by the Government may be sold to all persons applying therefor.—Those made from private designs and furnished without expense to the Government can only be had from their proprietors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 10, 1900.

SIR: Your letter of the 5th instant is received, inquiring as to your right, as a stamp collector, to purchase and sell proprietary stamps made from private dies, as well as other proprietary stamps.

You state that some proprietors do not object to selling their stamps; that others do object and will not sell or give away a single specimen, claiming that it defeats the object they had in adopting the special stamp. You inclose three samples of proprietary stamps, two of which are new and unused, which you bought from the proprietors, and one which has been used upon a bottle of "San Metto," manufactured by the Od Chemical Company of New York. You state that on the packages stamped by the Od Chemical Company are printed the following words:

It is unlawful to have in possession the Government revenue stamp on this package except as attached to this package containing the bottle of medicine. The penalties are severe.

You ask if this is correct. You state that you got the stamp from a party who buys the stamped medicine by the dozen. He uses the medicine and gives you the stamps to sell. You submit that if the statement of the Od Chemical Company is correct all stamp collections of private parties can be confiscated and penalties imposed.

In reply, you are advised that, as to proprietary stamps furnished by the Government, their sale to all persons applying for them is specifically authorized by section 25 of the act of June 13, 1898.

As to proprietary stamps from private dies or designs, furnished without expense to the Government, under section 9 of the act, they can only be legitimately procured from their proprietors. The method of procurement by purchase of the proprietary article to which they are affixed, and removal therefrom without destruction, is unlawful, for the reason that section 9 provides that:

In all cases where such stamp is used, instead of cancellation by initials and date, the said stamp shall be so affixed on the box, bottle, or package that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed.

In view of this provision, the burden of proof will be on anyone found in possession of a proprietary stamp from a private die or design as authorized by section 9, which has been used and removed without

destruction, to show that it was not removed for reuse and in fraud of the revenue.

Respectfully,
Mr. LOUIS ROBIE, *St. Louis, Mo.*

G. W. WILSON, *Commissioner.*

(187.)

Stamp tax—Bay rum.

Rate at which stamp tax is to be computed on bulk packages of imported bay rum.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1900.

SIR: I have to acknowledge the receipt of your letter of the 19th instant, relative to the stamping of imported bay rum in bulk packages.

You state that you have heretofore required bay rum in bulk packages imported in your district to be stamped under Schedule B at the rate of \$4 per gallon, but you recommend that this rate be reduced to \$3 per gallon.

On inquiry by this office, it is found that the usual retail price or value of imported bay rum is \$3.50 per gallon. You are authorized, therefore, to require the imported bay rum in bulk packages to be stamped to the amount of 8½ cents per gallon, and to notify the custom officers at your port to that effect.

Respectfully,
Mr. JAMES D. GILL, *Collector Internal Revenue, Boston, Mass.*

G. W. WILSON, *Commissioner.*

(247.)

Stamp tax—Slot machines.

Ruling under which medicinal proprietary articles and perfumery and cosmetics may be sold from slot or vending machines.—Treasury decision 19694 made applicable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1900.

SIR: I have to acknowledge the receipt of your letter of the 15th ultimo, inclosing letter from The Searle & Hereth Company, manufacturing chemists of Chicago, Ill., in which they desire a ruling that aromatic cachous may be sold in 1-cent packages from slot or vending machines, the 1-cent packages before being placed in the vending machine to be taken from a large package which has been duly stamped, the same as has been permitted by regulation in the case of chewing gum.

In reply, you are advised that the provisions of Schedule B give the Department greater latitude in making regulations about chewing gum than is permitted in regard to articles mentioned under the headings of medicinal proprietary articles and perfumery and cosmetics. The law

seems to require that all such articles should usually be sold only in stamped packages.

The following ruling was made, however, on July 14, 1898, for the packing and stamping of articles mentioned in Schedule B, other than chewing gum or bottled wine, which retail for less than 5 cents (see T. D. 19694):

Five cents being the lowest retail price mentioned in Schedule B, taxable articles retailing for a less sum may be packed together under one wrapper, band, or other inclosure when the retail price of said packages shall not in the aggregate exceed 5 cents, and a stamp for one-eighth cent shall be affixed on the outside band or wrapper, or other inclosure, in such a manner that the stamp will be wholly destroyed in opening the same.

In such cases each subpackage shall have printed thereon the words "sold from a duly stamped package."

Under the above ruling, taxable articles of medicine, perfumery, etc., retailing for less than 5 cents may be put up as therein directed and stamped, and on destroying the stamp, the subpackages may be detached and placed in a vending or slot machine. This ruling, however, must be strictly followed. Each subpackage must have printed on the outside thereof the words "sold from a duly stamped package."

Respectfully,
F. E. COYNE, *Collector Internal Revenue, Chicago, Ill.*

G. W. WILSON, *Commissioner.*

REPORTS.

(81.)

Reports on Form 8.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 28, 1900.

To collectors of internal revenue:

You are reminded that at the close of this month your first quarterly report on Form 8, pursuant to office letter of January 8, 1900, will be due.

Please furnish the report on or before April 10, 1900, and quarterly thereafter, whether any instruments have or have not been presented to you for action under section 13 of the act of June 13, 1898. If no instruments have been presented during the quarter, please write across the face of the report the words, "No instruments presented during the quarter ended ———, 190—," inserting the proper date after the word "ended."

In this connection, your attention is called to the following Treasury decisions, viz, No. 19681, dated July 12, 1898; No. 20441, dated December 15, 1898; No. 20585, dated January 18, 1899; No. 20590, dated January 19, 1899; No. 20696, dated February 10, 1899; No. 21023,

dated April 14, 1899 ; No. 21074, dated April 27, 1899 ; No. 21153, dated May 15, 1899 ; No. 21226, dated June 2, 1899 ; No. 21368, dated July 10, 1899 ; No. 21420, dated July 24, 1899, and No. 21539, dated August 25, 1899.

G. W. WILSON, *Commissioner*.

(124.)

Instructions relative to reports on Form 8.

[Int. Rev. Circular No. 569.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 11, 1900.

To collectors of internal revenue:

As there appears to be a misunderstanding on the part of many collectors regarding the proper manner of making up the quarterly report of instruments stamped, Form 8, the following instructions are hereby issued in relation thereto :

It is important that Book 25 and Form 8 contain a complete record of all instruments post stamped, giving names of parties, date, and description of instrument, when stamped, value of stamps affixed, and penalties remitted or collected. This information will be reported under the proper headings, the value of stamps affixed being shown under the head of "How stamped," and in the last column action regarding penalty will be reported as follows : If collected, insert "Penalty paid, \$———" (giving amount); if remitted, insert "Penalty remitted," or, if twelve months from date of issue have expired and no penalty is paid and no notation is made on the instrument, insert "No notation made."

Accompanying this circular will be found a blank form (No. 472) of voucher, a supply of which will be duly furnished, which will be used by collectors on and after June 1, 1900.

In all cases of remission of penalty, the party or parties presenting instruments for stamping will be required to sign one of these vouchers, which will be retained by the collector, and at the close of the quarter all of the vouchers executed will be forwarded with the quarterly return, Form 8, to this office. The vouchers should be numbered consecutively to correspond with the entries on Book 25 and Form 8.

Collectors are cautioned that under the law and the regulations of this office they are not authorized in any case to remit the penalty after twelve months from date of issue of the instrument.

All penalties collected on account of post stamping of instruments should be reported on Form 58 of the assessment list for the month in which the collection is made, in order that they may be properly charged and accounted for.

G. W. WILSON, *Commissioner*.

SHARES OF STOCK.

(217.)

Stamp tax—Shares of stock.

Shares of stock after issue given or surrendered to the company taxable as a transfer, and when afterwards sold by the company taxable at the same rate.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 26, 1900.

SIR: I have to acknowledge the receipt of your letter of the 27th ultimo, inclosing a report from Revenue Agent Kincaid in regard to the payment of tax on shares of stock by the Home Extension Mining Company, whose main office is in Boston.

From the report of Revenue Agent Kincaid the following facts appear:

Under the laws of West Virginia, this company was organized for the purpose of purchasing, developing, or selling mines, building sites, etc., in Colorado. Its capital stock is fixed at 1,000,000 shares of \$1 value each. A large quantity of mining property was previously purchased and individually held by the promoters and officers of the company as formed. After the completion of the organization, a portion of the deeds of the property hereinbefore referred to was duly transferred to the company in exchange for 499,950 shares of its original capital stock, representing fully paid up stock and not subject to further assessment.

The company now being without working capital (or the promoters wishing to realize money for the stock), these men surrender to the company, it is claimed absolutely, 300,000 shares, to be sold and reissued to purchasers, the proceeds thereof to go into its treasury. This is the stock now being sold in Leadville, Colo., as well as in Boston.

I have examined the stock book of the company, and find, as stated in the sworn statement of its treasurer, Mr. Emery, attached hereto, that the stubs of the original certificates, not the certificates themselves, bear stamps representing 5 cents per \$100, or fractional part thereof. I find, however, that the returned certificate for 300,000 shares is pasted on to its original stub. Against this certificate the certificates sent to Colorado are, as it were, charged without a new one for any balance of shares remaining being issued.

I find that a large number of blank certificates—in fact, all that go to Colorado—are sent in the care of the Leadville Bank, duly signed by the officers, but unstamped, for the reason given me that it is not known what number of shares they should be filled out for until the transaction is completed by the salaried agent of the company, Mr. Gaines, at Leadville, and, as stated by Deputy Collector Harris, of Leadville, then the certificates themselves are stamped at the rate of 2 cents per \$100 or fraction thereof, instead of the surrendered one, a part of which they represent and which remains in the company's office in Boston.

Under the above state of facts you are advised that the certificate for 300,000 shares, when surrendered or given to the company, should have been stamped at the rate of 2 cents per \$100 of par value as a transfer, and as this does not appear to have been done you will call on the company to make return of the same for assessment. This stock, when

WAREHOUSE RECEIPTS.

(179.)

Stamp tax—Warehouse receipts.

When bills for storage are taxable as warehouse receipts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 17, 1900.

SIR: Your letter of the 13th instant, inclosing a letter from James Hay, president of the Merchants' Warehouse Company of Philadelphia, has been received.

Please advise Mr. Hay that a receipt given for the payment of storage after the storage has ceased is not taxable as a warehouse receipt, but that a bill for storage rendered at the time the goods are received on storage, or during the continuance of such storage, is an acknowledgment that certain goods have been received and are held on storage, and requires a 25-cent stamp as a warehouse receipt.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. P. A. McCLAIN, *Collector Internal Revenue, Philadelphia, Pa.*

(186.)

Stamp tax—Warehouse receipts.

Definition of taxable warehouse receipts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1900.

SIR: I have to acknowledge the receipt of your letter of the 21st instant, in which you refer to internal-revenue ruling 179, published in TREASURY DECISIONS of July 19, 1900. It appears from your letter that you do not think this ruling is clear enough in defining taxable warehouse receipts.

The ruling, which you characterize as not "readily intelligible," is as follows:

A receipt given for the payment of storage after the storage has ceased is not taxable as a warehouse receipt, but a bill for storage rendered at the time the goods are received on storage, or during the continuance of such storage, is an acknowledgment that certain goods have been received and are held on storage, and requires a 25-cent stamp as a warehouse receipt.

It should perhaps be added to the above, for the sake of abundant clearness, that if any other form of warehouse receipt has been issued and stamped in any case where a bill is rendered the bill itself would not be taxable as a receipt.

Following the opinion of the Attorney-General, the ruling of this

office is that any instrument is a warehouse receipt that is issued by a warehouseman, and from which the fact that certain goods, merchandise, or property are deposited in his warehouse and held on storage for some particular person or persons can be reasonably inferred.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. WALTER C. REID,

Secretary and Treasurer American Warehousemen's Association,

New York, N. Y.

TOBACCO, CIGARS, CIGARETTES, AND SNUFF.

(28.)

Special tax—Leaf tobacco dealer.

A person who confines his business strictly to buying leaf tobacco and shipping it to foreign countries, and there selling it, is not required to pay special tax under the internal-revenue laws as a dealer in leaf tobacco on account of such business.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 30, 1900.

SIR: In reply to your verbal inquiry as to the special-tax liability of "a person buying leaf tobacco exclusively for export by himself," you are hereby advised that if he does not sell in this country either to dealers in leaf tobacco or to manufacturers of tobacco, snuff, or cigars, or to any other persons in the United States, any leaf tobacco, but confines his business therein strictly to buying leaf tobacco and shipping it to foreign countries and there selling it, he is not required to pay special tax under the internal-revenue laws as a dealer in leaf tobacco on account of such business.

Respectfully,

G. W. WILSON, *Commissioner.*

Mr. PARK AGNEW, *Collector Sixth District, Alexandria, Va.*

(54.)

Violation of internal-revenue laws.

Operation of forfeitures in case of property belonging to innocent parties used for fraudulent purposes.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., March 1, 1900.

The appended opinion of the United States district court of the eastern judicial district of Pennsylvania is promulgated for the information of collectors of internal revenue and others concerned.

G. W. WILSON, *Commissioner.*

UNITED STATES *v.* TWO HUNDRED AND THIRTY PATENTED MACHINES—
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA—
INFORMATION FOR FORFEITURE—No. 4 OF 1899.

Statement.

The suit was *in rem* to forfeit under the provisions of section 3400, Revised Statutes, the machinery, implements, apparatus, and other materials in the possession of W. M. Jacobs & Co., cigar manufacturers in the ninth district of Pennsylvania, charged with frauds upon the Government.

The machines were covered by patent rights and were not the property of Jacobs & Co., but were claimed by John R. Williams & Co., who leased them to Jacobs & Co. for an annual rental price.

The owners of the machines contended that their property was not liable to forfeiture, as they were innocent of frauds themselves and did not know that the machines would be used by the lessees in fraud of the Government; they further denied the right of the Government to claim the forfeiture of the machines and to sell them to purchasers under a judgment of forfeiture, with right to use them in disregard of the patent rights of the owners of the title.

The decision is clear in respect to the principle of absolute forfeiture of such property without regard to its ownership.

McPHERSON, district judge:

In July, 1899, the firm of William H. Jacobs & Co. was carrying on the business of manufacturing cigars in Lancaster, Pa., and was using for that purpose 220 patented machines known as "suction tables" and "bunching machines." Upon the 10th day of that month the collector of internal revenue for the ninth collection district seized these machines, alleging that the firm had violated the laws regulating the manufacture of cigars. Shortly afterwards the district attorney filed an information in this court, seeking to condemn the machines for three separate violations of section 3400 of the Revised Statutes. That section reads as follows:

"Every manufacturer of cigars who removes or sells any cigars without payment of the special tax as a cigar-manufacturer, or without having given bond as such, or without the proper stamps denoting the tax thereon; or who makes false or fraudulent entries of the manufacture or sale of any cigars; or makes false or fraudulent entries of the purchase or sale of leaf-tobacco, tobacco-stems, or other material used in the manufacture of cigars; or who affixes any false, forged, spurious, fraudulent, or counterfeit stamp, or imitation of any stamp, required by law to any box containing any cigars, shall, in addition to the penalties elsewhere provided in this Title for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco and cigars, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging."

The illegal acts charged in the information were that William M. Jacobs & Co. had removed their cigars without affixing proper stamps, had affixed counterfeit stamps to certain boxes containing cigars, and had made false and fraudulent entries of the manufacture and sale of

cigars, and of the purchase and sale of leaf tobacco and tobacco stems and other materials used in the manufacture of cigars in the books required by law to be kept by the firm. Two applications to intervene and defend were made, one by the John R. Williams Company, claiming to be the legal and bona fide owner of the machine, and the other by J. L. Steinmetz, who is the owner and lessor of the building in which the manufacture was carried on, and has a claim for rent which he desires to pursue by distraint upon the apparatus in controversy. Both interveners united in asking that a forfeiture be refused, and that the seizure be set aside, averring that the machines were only leased to the firm at an annual rental, and that the title to the property remains in the John R. Williams Company; averring, further, that the lessor company has no knowledge or information concerning the truth of the facts charged by the Government as causes for forfeiture, but that, if they are true, the illegal acts of the firm were done without the knowledge, information, or consent of the legal owner of the machines. The firm of Jacobs & Co. has filed no answer denying the charges, and their truth is conceded by all parties concerned.

It remains, therefore, to consider whether the fact that the John R. Williams Company (assuming that company to be the legal owner) knew nothing of the unlawful acts of Jacobs & Co., and did not consent thereto, is sufficient to prevent the forfeiture asked for by the Government. In my opinion, this is scarcely a disputable question. The language of section 3400 expressly declares that, if the prohibited acts are done by any manufacturer of cigars he shall forfeit to the United States all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession or in his manufactory. It seems to me that this language is too plain to admit of doubt. It was argued by the interveners that the section means no more than this, that the offending manufacturer shall only forfeit such property of his own as was used in his business and may be found in his possession, but I do not regard the argument as sound. If it should be allowed to prevail the mere device of hiring the apparatus necessary to carry on his business would enable the manufacturer to protect it from seizure by the Government, and would permit him to carry on an illegal business with limited liability.

If the owner of such apparatus chooses to lease it to, or in any other way to put it into the hands of, a person engaged in the manufacture of cigars, he must be regarded as transferring the possession with the knowledge that the apparatus may be put to an unlawful use, and may, therefore, be liable to the penalty of forfeiture. He takes the risk, therefore, that the manufacturer will conduct his business in accordance with law; and if the risk falls out against him, he can not be heard to set up his own ignorance of the manufacturer's illegal conduct or his own innocence of unlawful intent. A pertinent analogy, I think, may be found in the case of an owner of personal property who puts it upon the premises of a tenant. Such an owner is bound to know that the law permits the distraint of property upon the premises (if it does not fall within certain excepted classes) for the nonpayment of rent; and he can not, therefore, be heard to complain that he did not know either that the tenant's rent was unpaid or that his own property might be applied to pay another man's debt.

Under the facts now before the court, I think that a similar conclusion must be reached. The John R. Williams Company must be charged with the knowledge that the laws of the United States permitted all property found upon the premises of an offending manufacturer of cigars,

and used in that business, to be forfeited, and must be held to have committed their machines to the possession of Jacobs & Co. with the knowledge that they might be put to an unlawful use, and might, therefore, be seized and forfeited by the Government. The unlawful use being conceded, nothing remains for the court except to declare that the risk has fallen out against the legal owners of the machines, and that they must abide by the consequences. No case has been cited that has applied the particular section now being considered, but there are decisions under other sections in which a similar principle has been distinctly declared. (*Distillery v. United States*, 96 U. S., 395; *United States v. Two Bay Mules*, 36 Fed., 84; *United States v. Two Barrels of Whisky*, 96 Fed., 479.) In the last case the forfeiture was refused upon the ground that the owner of the offending property was not responsible for the fact that it was in the possession of the violator of the law. Upon the facts there proved, the owner was as innocent as if his property had been stolen from him and then put to the illegal use. Here there is the vital difference that the machines in controversy were deliberately put into the possession of the manufacturer, who was thus enabled to violate the law in the use of the property, and actually did put it to an unlawful use.

The defense set up by the interveners is overruled, and a decree of forfeiture will be entered.

(74.)

Seizure of packages of tobacco containing prohibited articles.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1900.

To collectors of internal revenue:

Your attention is called to the last paragraph of section 10 of the act of July 24, 1897, which provides that:

None of the packages of smoking tobacco and fine-cut chewing tobacco and cigarettes prescribed by law shall be permitted to have packed in, or attached to, or connected with, them, any article or thing whatsoever, other than the manufacturers' wrappers and labels, the internal revenue stamp and the tobacco or cigarettes, respectively, put up therein, on which tax is required to be paid under the internal revenue laws; nor shall there be affixed to, or branded, stamped, marked, written, or printed upon, said packages, or their contents, any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

You will notify manufacturers that the above statutory provisions must be strictly observed, and all tobacco and cigarettes removed from the factory in disregard thereof, found in the possession of the manufacturer or his agents, stamps bearing cancellation on and after the 20th proximo, will be seized for forfeiture.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(96.)

Forfeiture of cigars.

The caution notice, the number of the manufactory, and the district and State may be printed upon enameled tin or pasteboard packages intended for packing cigars.—The substitution by a manufacturer of cigars of a different number, and a different district and State for his own registered number and district and State, would be in violation of section 3393, Revised Statutes, and all cigars found at his factory put up in packages bearing caution-notice labels, marks, or brands different from those required for his factory, would be subject to forfeiture under 3455, Revised Statutes.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., April 13, 1900.

SIR: This office has received a letter from Messrs. Stier & Son, dated Louisville, 4th instant, in which they present the question whether the caution notice, the number of the manufactory, and the district and State in which it is situated may be printed upon enameled tin boxes intended to be used by manufacturers as statutory packages for packing cigars, and whether such printing may be done by the cigar-box manufacturers before the boxes are delivered to the cigar manufacturer.

In reply to these inquiries, the office advises that no objection is made to the caution-notice label being printed upon pasteboard, paper, enameled tin or other metal, or paper packages approved under the regulations as substitutes for wooden boxes for use by manufacturers in packing cigars, where such labels are printed in a clear and legible manner.

The statute (sec. 3393, Rev. Stat.) contemplates that the label shall be affixed to packages after the cigars have been placed therein and before the cigars are removed from the factory. Any neglect on the part of a manufacturer to affix the proper label on packages containing cigars would render him liable to a fine of \$50 for each box in respect to which such offense is committed. Should a manufacturer of cigars employ another person outside of his factory to affix the caution-notice labels on empty packages, intended to be used for packing cigars, before such packages are delivered to him at his cigar factory, he does so at his own risk.

It appears that a number of manufacturers of cigars have improperly labeled and branded their cigar boxes and substituted for their own factory number and the number of their district and State a different factory number and a different district and State, in violation of section 3393, Revised Statutes. The name of all manufacturers so violating the statutes must be reported to this office, and all cigars found at any cigar factory improperly packed, labeled, or branded will be detained or seized, as the circumstances in each case may justify, and the facts reported to this office.

Unstamped empty cigar boxes, or other packages, found on the factory premises, intended to be used by the manufacturer for packing

cigars, bearing the caution-notice labels or marks and brands different from those required for the factory in which the boxes or other packages are found, will be subject to forfeiture under section 3455, Revised Statutes.

Respectfully, G. W. WILSON, *Commissioner.*
Mr. CHARLES E. SAPP, *Collector Fifth District, Louisville, Ky.*

(97.)

Labeling cigar packages.

The caution-notice label may be printed upon pasteboard, paper, enameled tin or other metal, or paper packages, approved as substitutes for wooden boxes for packing cigars. The printing may be done before the packages are delivered to the cigar manufacturer.—A cigar-box manufacturer may affix caution-notice labels on cigar boxes before delivery to a cigar manufacturer.—If a manufacturer of cigars should fail to affix or cause to be affixed the proper label on packages containing cigars removed from the factory, he would incur liability to a fine imposed by the statute for such neglect.—Cigar packages bearing caution-notice labels and brands of one factory found on the premises of another factory are subject to forfeiture.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., April 13, 1900.

SIR: This office has received a letter, dated 3d instant, from Messrs. Hauenstein & Co., manufacturers of cigars, at Lincoln, Pa., in which they present the question whether a cigar-box manufacturer may affix the caution-notice label on cigar boxes before they are delivered to the cigar manufacturer. They have been referred to you.

The office advises that no objection is made to the caution-notice label being printed upon pasteboard, paper, enameled tin or other metal, or paper packages, approved as substitutes for wooden boxes for packing cigars, the printing to be done before the packages are delivered to the cigar manufacturer. Nor does the office interpose any objection to a cigar-box manufacturer affixing caution-notice labels on cigar boxes before the same are delivered to a cigar manufacturer.

Every manufacturer of cigars is required to affix on each box containing cigars a proper caution-notice label. It was contemplated by the statute that the label would be affixed after the cigars have been placed in the package, and should there be any neglect on the part of a manufacturer to affix the proper label on packages containing cigars removed from the factory, he would incur liability to a fine of \$50 for each box in respect to which such offense is committed. Should a manufacturer of cigars employ another person outside of his factory to affix the caution-notice label on empty packages, before the same are delivered to him at his cigar factory, he does so at his own risk. This ruling applies as well to a label printed directly on the package as it does to a separate label affixed to such a package.

It appears that a number of manufacturers of cigars have, until

recently, each operated a single factory under two or more numbers, using several separate and distinct caution-notice labels, marks, and brands, and that other manufacturers have operated two or more factories in different districts, or in the same district, and interchanged at their own will the caution-notice labels, marks, and brands of one factory for those of another factory, in violation of the statutes and the regulations.

In this connection, collectors have been advised that each cigar factory must be provided with its own workshop, storage room, and packing room, and that the cigars made at one factory can not be received at another factory, whether such cigars are loose or are properly packed and stamped; and that all cigar boxes, whether empty or containing cigars, found on the bonded premises of a cigar factory bearing the caution-notice labels and the marks and brands of other factories will be subject to forfeiture. In such cases all cigar packages found at the factory improperly labeled or branded, and all cigars, whether properly packed or loose, made at another factory, found on the bonded premises, will be detained or seized, as the circumstances may justify, and the facts reported to this office.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. HENRY L. HERSHEY, *Collector Ninth District, Lancaster, Pa.*

(99.)

Seizure of packages of tobacco containing prohibited articles.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., April 16, 1900.

To collectors and other internal-revenue officers:

The time prescribed in letter dated the 17th ultimo for enforcing the provisions of the last paragraph of section 10, act of July 24, 1897, is hereby extended to June 1, 1900.

G. W. WILSON, *Commissioner*.

(133.)

Seizure of packages of tobacco containing prohibited articles.

Enforcement of the provisions of the last paragraph of section 10, act of July 24, 1897.—

Amended by decision No. 185.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., May 24, 1900.

To collectors of internal revenue:

Your attention is again called to the provisions of the last paragraph of section 10 of the act of July 24, 1897, which provides that—

None of the packages of smoking tobacco and fine-cut chewing tobacco and cigarettes prescribed by law shall be permitted to have

packed in, or attached to, or connected with, them, any article or thing whatsoever, other than the manufacturers' wrappers and labels, the internal revenue stamp and the tobacco or cigarettes, respectively, put up therein, on which tax is required to be paid under the internal revenue laws; nor shall there be affixed to, or branded, stamped, marked, written, or printed upon, said packages, or their contents, any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

In respect to which you were directed, under date of March 17 last, to notify manufacturers that the above statutory provisions must be strictly observed, and that all tobacco and cigarettes removed from the factory in disregard thereof, stamps bearing cancellation on and after April 20 would be seized for forfeiture, which order, by letter dated April 16, was modified to extend the time for the enforcement of the provisions of said section to June 1, 1900.

The office assumes that manufacturers and importers, or owners, respectively, of domestic and foreign-made smoking tobacco and fine-cut chewing tobacco, and cigarettes, and small cigars weighing not more than 3 pounds per thousand, are sufficiently advised with respect to official orders, previously made, directing that all tobacco and cigarettes found in the possession of a manufacturer or his agents, in his manufactory or elsewhere, improperly packed in disregard of the provisions of the statute and bearing stamps showing cancellation on and after June 1, 1900, would be subject to forfeiture.

The office now directs that collectors of internal revenue shall, on and after the 1st proximo, proceed to enforce the penalties of forfeiture under sections 3372, 3397, and 3456, Revised Statutes.

Special attention is called to the first provision of the last paragraph of section 10 of the act of July 24, 1897, which relates to manufacturers' wrappers and labels, in respect to which it is held that a manufacturer may affix to his statutory packages of tobacco, cigars, or cigarettes any label used by him, and the inscription thereon may indicate the character of the contents of the package, the special trade-mark or the particular name and brand known to the trade, the registered factory number, and district and State in which located, provided such label does not contain any promise or offer of, or any order or certificate for any gift, prize, premium, payment, or reward.

Advertisement cards, circulars, and coupons offering prizes, premiums, or rewards are prohibited by the statute from being packed in, attached to, or connected with, statutory packages containing fine-cut chewing tobacco, smoking tobacco, or cigarettes, or small cigars weighing not more than 3 pounds per thousand.

It is prescribed by the regulations, series 7, No. 8, revised, page 38, that no foreign article or merchandise of any kind, intended to be sold or given away, can be packed with tobacco or snuff in statutory packages.

This regulation applies alike to all kinds of tobacco and snuff, however prepared, manufactured, and sold, or removed for consumption or

sale, and is independent of the provisions of the last paragraph of section 10 of the act of July 24, 1897 ; but the regulation is not intended to prohibit manufacturers from packing with their *plug or twist* tobacco small circulars, cards, tin tags, medals, and other similar articles used for advertising purposes, and which do not materially increase the size or weight of the package.

The office does not prescribe the manner in which a manufacturer should repack his statutory packages of tobacco or cigars for shipment, and holds that statutory packages of tobacco or cigars properly packed, labeled, and stamped may be repacked in pasteboard boxes, cartons, crates, cases, or paper wrappers, in which the manufacturer may also place other parcels, or packages of cigarette paper, advertisement cards, circulars, or pamphlets, when such parcels or packages are not otherwise connected with the statutory packages of tobacco, cigars, or cigarettes.

G. W. WILSON, *Commissioner*.

(138.)

Liability to special tax of tobacco dealers and manufacturers under the act of June 13, 1898.

[Int. Rev. Circular No. 573.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 31, 1900.

To collectors of internal revenue and others concerned:

The Comptroller of the Treasury has decided that the special taxes of tobacco dealers and manufacturers who were engaged in such business during the preceding fiscal year shall be computed on the total sales in such preceding fiscal year without regard to whether the dealer or manufacturer was engaged in such business during the whole or only a part of said year.

Collectors will be governed accordingly in the collection of special taxes in future from such dealers and manufacturers, and also in the certification of their claims for the refunding of special taxes claimed to have been paid in excess.

Dealers or manufacturers who were not engaged in such business during the preceding fiscal year must procure special-tax stamps before commencing business. The special-tax stamp purchased at the commencement of business may be of such grade as, in the opinion of the dealer or manufacturer, may be required to cover his business for the fiscal year, but when the limit of sales allowed under such stamp is reached, the dealer or manufacturer must procure a stamp of a higher grade, so that his liability to special tax on the basis of sales as provided by law will at all times be covered.

G. W. WILSON, *Commissioner*.

(168.)

Test case in regard to packages of tobacco containing prohibited articles.

Section 10, act of July 24, 1897, prohibits packages of smoking tobacco, fine-cut chewing tobacco, and cigarettes from having packed in, or attached to, or connected with them, "any article or thing whatsoever" of a foreign nature, and provides that there shall not be affixed to, or branded, stamped, marked, written, or printed upon said packages, or their contents, any promise or offer of, or any order or certificate for any gift, prize, premium payment, or reward.

In the case of *United States v. Two Hundred and Eighty-eight Packages of Merry World Tobacco*, brought to determine whether there is any penalty provided for violations of this provision, and also to determine the question as to its constitutionality, a decision has been rendered holding the act constitutional, and that section 3456, Revised Statutes, provides a penalty.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 29, 1900.

To collectors of internal revenue:

The appended decision of the United States district court for the district of West Virginia, in the case of the *United States v. Two Hundred and Eighty-eight Packages of Merry World Tobacco*, is published for the information of internal-revenue officers.

The instructions in circular letter of May 24, 1900 (T. D. 133), in regard to the enforcement of the provisions of the last paragraph of section 10 of the act of July 24, 1897, remain in force.

G. W. WILSON, *Commissioner.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF WEST VIRGINIA.—AT WHEELING, JUNE, 1900.

United States v. Two Hundred and Eighty-eight Packages of Merry World Tobacco.

JACKSON, district judge:

The United States filed an information on the 17th day of October, 1898, in this district against two hundred and eighty-eight packages of Merry World smoking tobacco. The information charges that these packages contained, in violation of law, what is known as the "Merry World Tobacco Coupon," offering premiums to the holders of these coupons, the amount of which was to be determined upon the number of coupons returned to the manufacturer.

It is alleged that the placing of any article, other than that authorized by the statute of the United States, in such packages, was a violation of the tenth section of the act of July 24, 1897, amending section 3394 of the Revised Statutes of the United States. It is admitted that each package of tobacco contained one of these coupons, and it is here stipulated that all informalities and omissions in the pleadings are waived by counsel of the parties to this proceeding.

This information is founded upon the third clause of section 10 of the act of July 24, 1897, amending section 3394 of the Revised Statutes, which declares that "none of the packages of smoking tobacco and fine-cut chewing tobacco and cigarettes prescribed by law shall be permitted to have packed in, or attached to, or connected with them, any

article or thing whatsoever, other than the manufacturers' wrappers and labels, the internal-revenue stamp, and the tobacco or cigarettes, respectively, *put up therein*, on which tax is required to be paid under the internal-revenue laws."

It is unnecessary at this time to review the history of the legislation of Congress relating to the various acts passed, known as the internal-revenue laws. Congress, in its wisdom, saw fit to resort to this mode of taxation for the purpose of raising revenue to defray the expenses of the Government. It must be conceded at the threshold of the discussion that to Congress alone belonged the power to enact laws for raising revenue for the support and maintenance of the Government. The eighth section of Article I of the Constitution expressly declares that Congress shall have power to lay and collect taxes. This is an express grant, which confers this power upon Congress alone, and such power is independent of the coordinate branches of the Government. If, then, under the Constitution, Congress alone possesses this power, it follows that it alone possesses the power to provide the manner, the form, and the means by which taxes are to be levied, provided that Congress does not exceed the grant of power conferred under the Constitution.

Assuming this position to be correct, the first question for consideration is, Is the statute upon which this proceeding is founded within the legitimate sphere of the legislative power of Congress? Questions of kindred character, involving the questions now under consideration, have been so often reviewed and passed upon by the Supreme Court of the United States that it would seem to be almost a work of supererogation upon the part of this court, at this late day, to enter the domain of discussion of the question involved in this case, for the reason that in the opinion of this court the judicial path has been made so clear by numerous decisions, commencing with the decision of that great jurist, Chief Justice Marshall, in the case of *Fletcher v. Peck* (6 Cranch, 128). He announces the doctrine in that case that when the question for consideration before the court was "whether a law be void for its repugnancy to the Constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case * * * The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

In the case of *McCulloch v. State of Maryland* (4 Wheaton, 423), Judge Marshall, in considering the constitutionality of an act of Congress, states the law to be:

"Where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground. This court disclaims all pretensions to such power."

In the same opinion he says:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

It would seem, therefore, that all means which are necessary to be exercised for the legitimate purpose of levying taxes and collecting the same may be employed to that end. In the case of the *United States v. Fisher* (2 Cranch, 396), the learned chief justice announced the doctrine that "any means which are in fact conducive to the exercise of a

power granted by the Constitution," or as he stated in the case of *McCulloch v. State of Maryland*, "any means calculated to produce the end that Congress had in view were legitimate and constitutional." This same doctrine was affirmed in the *Legal-Tender Cases* (12 Wallace, 531), Justice Strong, delivering the opinion of the court, and in the case of *Veazie Bank v. Fenno* (8 Wallace, 548), in which Chief Justice Chase, who in his day was one of the ablest constitutional lawyers in the country, speaking for the Supreme Court, announced the doctrine "that the judicial can not prescribe to the legislative departments of the Government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected." It would seem to be a well-settled principle of constitutional law—in fact, I may say it is now elementary—that where there is not an express grant in the Constitution, yet in the absence of a grant of power applied to a specific case, there is always an implied power which is incidental and auxiliary to the Constitution to execute and carry out its provisions, as in this case the Constitution confers the power upon Congress to lay and collect taxes, but leaves it to the wisdom of Congress to prescribe the mode, manner, and means of levying and collecting the same. What, then is the object of the statute under consideration? It is apparent that its only purpose is to protect and secure the Government in raising its revenues upon the particular subject of taxation specified in it. In the language of Chief Justice Marshall, "Is the end legitimate, and are the means adopted and used adapted to carrying out the purpose and object of Congress in passing the bill?" As was well said by the court in the case of *Hepburn v. Griswold* (8 Wallace, 615), it is "finally settled, so far as judicial decisions can settle anything, that the words 'all laws necessary and proper for carrying into execution powers expressly granted or vested have, in the Constitution, a sense equivalent to the words, laws not absolutely necessary indeed, but appropriate, plainly adapted to constitutional and legitimate ends; laws not prohibited, but consistent with the letter and spirit of the Constitution; laws really calculated to effect the objects intrusted to the Government.'"

If the principle just announced be correct, we are at a loss to see how an act of Congress can be held to be unconstitutional which has a legitimate object, and which is plainly appropriate to secure the collection of taxes provided for in the act. The act in itself is merely an incidental and auxiliary power which is found in the Constitution, and is necessary, as it seems to us, to execute the express grant of power upon which this statute is founded. To declare this act of Congress unconstitutional would have a far-reaching effect and would cripple the powers of the Government in the collection of revenues for its maintenance and support. I can not reach the conclusion, in the language of Chief Justice Marshall, that the means employed by Congress were not "adapted to the end." I do reach the conclusion, therefore, that the act in itself is constitutional and that Congress had the power, under an express grant in the Constitution, to adopt such means as would secure the end it had in view.

Having disposed of the constitutional question, I will now consider what was the purpose of Congress in declaring what packages of smoking tobacco should contain. There could be but two reasons for the inhibition and restriction contained in the statute. First, it was the intention

of Congress to secure the revenue, and, second, to protect the purchaser of manufactured chewing and smoking tobacco from fraud.

The statute under consideration expressly forbids the manufacturer to place any article or thing whatsoever, of a foreign nature, in the package, for the reason that the tax being on the weight of the package it is essential that it does not contain foreign matter. The manner of packing tobacco, the size of the packages, and what it should contain have been fixed by the statute and the rules and regulations prescribed by the Commissioner of Internal Revenue. The statute and these rules and regulations prescribed by the Commissioner were not for a vain purpose. If the statute is not prohibited by the Constitution and effects the object and purpose that Congress had in view, can the restriction operate an injustice to anyone? I think not. Congress alone decides for itself how the packages of tobacco should be put up and what each package should contain. I am at a loss to conjecture what cause of complaint can be made by the manufacturer when, by statute, the size of the box and its contents are fixed. All the manufacturer has to do is to comply with the law and not place any other article or thing whatsoever in the box unauthorized by the statute. It was not intended that the boxes should be so packed as to enable the manufacturer to establish a gift enterprise. When the Government determines to levy a tax upon any thing or article liable to taxation, it necessarily has a purpose. Its first object is to exercise its powers of taxation, and its second object is to prevent fraud upon the revenue and to protect the purchasers of the manufactured article and the public from fraud. Most stringent statutes have been enacted for the protection of the Government in the collection of its revenue from distilled and alcoholic liquors and from oleomargarine, and in every case that has come under my observation the courts have uniformly sustained them as both necessary and just.

I can not adopt the view of counsel for the defendants in this case. If their contention should be sustained it would embarrass the Government in the collection of her revenue and tend to throw the administration of the great internal-revenue system of this country into almost endless confusion.

As I have reached the conclusion that Congress had the power to tax the subjects made under consideration, it follows that in the exercise of this right it may prescribe the manner or mode of enforcing the collection of the revenue, and, as in this case, fix the amount of taxation upon the article assessed as well as to prescribe the manner of packing, the size of the box, and the weight of its contents. I reach the conclusion that the insertion in a package of tobacco of any other substance or thing than the tobacco itself, be it ever so small in size or light in weight, is a violation of the statute and renders the party violating it responsible for such violation.

In this connection, it is claimed that there is no statute that imposes a penalty for the violation of section 10. It is a quasi criminal statute, inhibiting and restraining manufacturers of tobacco from inserting any material other than tobacco in the package. It is claimed that there is no special provision in the act of 1897 which punishes a party for the violation of section 10. Congress sometimes omits, in the haste of legislation, to fix a penalty for the violation of some of its statutes; but in this case it is unnecessary to rely upon the provisions of the act of 1897. There is a general act of the Revised Statutes—section 3456—which, in my judgment, provides the remedy for a violation of this statute.

Other questions have been presented to the court for its consideration,

but in the view the court takes of this case it is unnecessary to notice them.

For the reasons assigned, the court is of opinion that the defendants have violated section 10, and that the punishment is imposed by section 3456.

(185.)

Regulations respecting the contents and the marking and labeling of statutory packages of tobacco and cigars.

[Series, 7, No. 8, revised.—Supplement No. 1.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1900.

Section 3362, Revised Statutes of the United States, prescribes that—

All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removed for sale or consumption, in packages of the following description, and in no other manner.

Following the declaration, the statute enumerates the different kinds of manufactured tobacco, and specifically prescribes the quantity of tobacco or snuff that shall be placed in a statutory package.

The third and fifth paragraphs of the section prescribe that fine-cut chewing tobacco may, at the option of the manufacturer, be put in wooden packages containing 10, 20, 40, and 60 pounds each; and all cavendish, plug, and twist tobacco, in wooden packages not exceeding 200 pounds net weight.

The sixth paragraph of section 3362 aforesaid prescribes that—

Every such wooden package shall have printed or maked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the tobacco in each package.

In view of this statute and section 59, act of August 28, 1894, it is prescribed that manufacturers of tobacco are required to print or mark on each statutory package of cavendish, plug, leaf, twist, and fine-cut chewing tobacco, put up in bulk for consumption, the gross weight, the tare, and the net weight. The gross weight must include the full weight of the package and its contents; the tare shall include the weight of the box, barrel, pail, caddy, or other statutory package, with its lining, covering, labels, and tin-foil wrappings; the tare subtracted from the gross weight will determine the net weight of the package upon which the tax must be paid.

A suitable internal-revenue stamp, denoting the weight and class of the tobacco upon which the tax has been paid, must be affixed to each package and canceled in the manner prescribed by previous regulations, series 7, No. 8, revised.

It is held that a statutory package of tobacco or cigars means a package which contains manufactured tobacco or cigars and nothing else,

and that any other substance or thing than the tobacco or cigars can not lawfully be placed in statutory packages of tobacco, cigars, or cigarettes of any description, and that the inclusion of the tobacco, cigars, or cigarettes means the exclusion of all foreign articles or any other business.

The last paragraph of section 10 of the act of July 24, 1897, provides that—

None of the packages of smoking tobacco and fine-cut chewing tobacco and cigarettes prescribed by law shall be permitted to have packed in, or attached to, or connected with, them, any article or thing whatsoever, other than the manufacturers' wrappers and labels, the internal-revenue stamp and the tobacco or cigarettes, respectively, put up therein, on which tax is required to be paid under the internal-revenue laws; nor shall there be affixed to, or branded, stamped, marked written, or printed upon, said packages, or their contents, any promise or offer of, or any order or certificate for, any gift, prize, premium, payment or reward.

With respect to which it is held that a manufacturer may, in addition to the required caution-notice label, affix to a stamped statutory package of tobacco, snuff, cigars, or cigarettes, respectively, any label used by him, and the inscription thereon may indicate the character of the contents of the package, the special trade-mark, the particular name or brand known to the trade, the registered factory number, the district and State in which situated, and the name of another person, a dealer in tobacco, when associated with his own name as manufacturer, provided such label does not contain any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward, and is not intended to be used in connection with a gift enterprise.

It is not intended to prohibit manufacturers' labels and wrappings, either when attached to stamped packages, or attached to individual plugs or twist, in case of plug or twist tobacco, nor is it intended to prohibit the use of tin-foil wrappings in that connection. But it is intended to prohibit the placing into a stamped statutory package, or attaching thereto, of all cards, circulars, certificates, and other matter of any kind foreign to the tobacco, snuff, cigars, or cigarettes, except only the manufacturers' wrappers and labels, including trade-mark tin tags, trade mark strips, and spacing strips. Even these labels, wrappers, trade-mark tin tags, trade-mark strips, and spacing strips must be excluded if they contain any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

The foregoing regulations shall take effect on the 1st day of September, 1900, and all regulations, rules, and orders heretofore issued inconsistent herewith are rescinded from that date.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary*.

(201.)

Union labor labels.

Labels issued by a cigar makers' international union to manufacturers may be used by them in connection with their statutory packages of cigars, provided such labels do not contain any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 17, 1900.

SIR: This office has received a letter, dated 13th instant, from Deputy Collector Henry Yates, submitting a sample label furnished by the Cigar Makers' International Union to cigar manufacturers, to be used in connection with their statutory packages of cigars, and presenting the question whether the use of such labels by manufacturers is prohibited.

The office on the 16th instant informed you by wire that the regulations, series 7, No. 8, revised, supplement No. 1, are not intended to prohibit the use of union labels, by manufacturers, in connection with their statutory packages of tobacco, snuff, cigars, and cigarettes, and that the concurrent ruling of May 28 last had not been revoked.

The office on May 28, in a letter addressed to the Hon. Benj. F. Marsh, Member of Congress from the Fifteenth Illinois district, concerning this question, advised him that the office letter addressed to collectors of internal revenue, on May 24, concerning the enforcement of the provisions of the last paragraph of section 10 of the act aforesaid, July 24, 1897, was not intended to prohibit manufacturers from using union labels in connection with their statutory packages of tobacco, cigars, or cigarettes when such labels do not contain any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
MR. RICHARD YATES, *Collector Eighth District, Springfield, Ill.*

(233.)

Advertisements on cigar boxes.

Merchants can not lawfully advertise their brands of whisky or other articles on cigar boxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 20, 1900.

SIR: In your letter of the 17th instant, you ask whether you can lawfully attach your label advertising your whisky on cigar boxes that you purchase from the manufacturer.

In reply, you are informed that section 3396, Revised Statutes, provides that the Commissioner shall prescribe such regulations for the inspection of cigars, cheroots, and cigarettes as he may deem most

effective for the prevention of frauds, and that under that provision of law the Commissioner has prescribed that labels advertising other articles than cigars would place obstructions in the way of revenue officers and endanger the proper collection of the revenue.

Respectfully, G. W. WILSON, *Commissioner*.
Mr. J. H. O'BRIEN, *Springfield, Ill.*

(245.)

Decoration of statutory packages of tobacco, cigars, and cigarettes.

Pictures and other ornamentations, with descriptive matter, may be printed on statutory packages of tobacco, cigars, and cigarettes, notwithstanding the same have not been adopted as trade-marks for advertising the goods.

Such pictures or decorations may be printed upon manufacturers' wrappers or labels, upon cigar packages, or the outside or inside case of cigarette packages, when they avoid any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 15, 1900.

SIR: Referring to office letter dated 3d instant, addressed to your company, prohibiting the printing of pictures of certain persons, with inscription of honorary mention, on your packages of cigarettes, Sweet Caporal brand, after a careful review of the question, the office recalls the advices contained in that letter.

In view of the Regulations, series 7, No. 8, revised, supplement No. 1, 9th paragraph, on page 4, relating to marking and labeling of statutory packages of tobacco, snuff, cigars, and cigarettes, it is decided that a manufacturer should not be prohibited from decorating and ornamenting his packages in an attractive manner, notwithstanding the pictures and ornamentations are not adopted as his special trade-marks for advertising the goods.

It is further decided that the regulation shall not be so construed as to prevent manufacturers from printing upon their wrappers or labels, or upon their cigar packages, or upon the outside case or the inner case of cigarette packages, lithograph or other pictures, of persons or things, with proper inscription referring thereto, or other illuminations or ornamentations in colors, when such pictures, illuminations, ornamentations, or descriptive matters avoid any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward.

But the aforesaid regulations shall not be so construed as to permit manufacturers to pack in, attach to, or connect with their statutory packages loose advertisement cards, picture cards, circulars, music cards, or other foreign articles, in contravention of the provisions of the last paragraph of section 10 of the act of July 24, 1897, and prohibited by the regulations.

Respectfully, G. W. WILSON, *Commissioner*.
PERCIVAL S. HILL, *New York, N. Y.*

MISCELLANEOUS.

CIRCULATION.

(181.)

Canadian bank notes—Circulation in United States.

Whenever Canadian bank notes or any notes, foreign or domestic, other than national-bank notes, are used for circulation in the United States, any bank receiving such notes and paying them out again in the United States is required to pay the tax of 10 per cent under section 20, act of February 8, 1875.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 23, 1900.

SIR: Your letter of the 13th instant has been received, relating to the liability of your bank for the tax of 10 per cent on Canadian bank notes paid out by it.

Whenever Canadian bank notes, or the notes of any person, firm, corporation, association, or company, whether foreign or domestic (other than a national banking association), are passed from hand to hand anywhere in the United States in payment of debts or in the purchase of goods, it is held that they are used for circulation in the United States, and that any bank receiving these notes so used and paying them out again in the United States is required to pay the tax of 10 per cent on the amount of the notes thus paid out (or "sold") in view of the provisions of section 20 of the act of February 8, 1875 (18 Stat., 311).

This question has been fully considered and settled by this office, as you will see by reference to the rulings in Volume XXXIV, Internal Revenue Record, on pages 53, 61, 77, 93, 94, and 101, which will be shown you at the office of the collector of internal revenue in your district. The "printed slips or circular letters in print," which you state were exhibited to you by Revenue Agent Towne, as copies of decisions made here, were no doubt exact copies of these rulings.

The revenue agent in his report sets forth the sworn return made by you as president and manager of the Bank of Clallam County, showing that, as far as you "can determine, said bank has paid to the agent of the Northern Pacific Express Company at Port Angeles, Wash., since June 30, 1898, \$1,650, and to various other persons in Port Angeles, Wash., in the same period, \$100, all in Canadian bank notes, and that the said bank has not previously made return of the amount of Canadian notes thus paid out, nor paid the tax upon same as required as law."

The tax of 10 per cent thereon (\$175) has, therefore, been assessed against your bank, these notes having, as it is understood, been used for circulation in the community in lieu of the money or currency of the United States, and having, after such use, been received on deposit in your bank as reported by the revenue agent and thereafter paid out. These being the facts, your bank, under the construction given by this

office to the statute (the correctness of which I find no room to doubt), must be required to pay this tax.

Upon payment of this assessment, you will then be at liberty under the law to test the question by suit if, upon further consideration, you find it advisable to do so, after claim for refunding shall have been made by you and rejected by this office (sec. 3226, Rev. Stat.).

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. H. E. LUTZ,

President, Bank of Clallam County, Port Angeles, Wash.

(242.)

Circulation tax—Canadian bank notes.

A bank does not become subject to the tax of 10 per cent under section 20, act of February 8, 1875, for merely receiving on deposit Canadian bank notes that had been used for circulation. It is only when it pays out in the United States these notes that it is required to pay this tax.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., November 9, 1900.

SIR: The Comptroller of the Currency has referred to this office your letter of the 24th ultimo, relating to the great annoyance caused your depositors by the operation of the United States law under which a tax of 10 per cent is imposed on the circulation in the United States of Canadian bank notes, "they being obliged" (as you suppose) "to get their money changed into American issues" before you can take it.

This is a misapprehension. Your bank does not become involved in liability to the 10 per cent tax under section 20, act of February 8, 1875, for merely receiving on deposit Canadian bank notes that had been used for circulation. It is only when you pay out in the United States these notes thus received from your depositors that you are required to pay this tax. If instead of thus paying out the Canadian bank notes received by you, you in all cases send them to Canada for redemption, you are not required to pay tax thereon by reason of the fact that they had been used for circulation in the United States previously to your receipt of them from your depositors.

You ask: "Are not business firms in our city, and private individuals as well, who receive and disburse these Canadian bills in the usual course of trade amenable to the same law and penalty as well as banks?"

They are not, unless in view of the language of section 19 of the act of February 8, 1875, they also issue notes of their own that are used for circulation.

Respectfully,

ROBT. WILLIAMS, Jr., *Acting Commissioner*.

Mr. F. H. LOWELL, *Calais, Me.*

(257.)

Circulation tax—Mexican bank notes.

Banks in the United States receiving on deposit and paying out Mexican bank notes which have not been, nor are at any time, used for circulation in the United States, are not required to pay a tax of 10 per cent thereon under section 20, act of February 8, 1875.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 14, 1900.

GENTLEMEN: In reply to the letter signed by officers of the First National Bank, the Lowden National Bank, and the State National Bank of El Paso, Tex., which you referred to this office on the 8th instant, relating to the ruling in TREASURY DECISIONS (vol. 3, No. 30, pp. 24-25), wherein it is held that banks receiving and paying out in the United States Canadian bank notes that have been used for circulation in the United States are required to pay a tax of 10 per cent thereon under section 20 of the act of February 8, 1875, will you please inform them that this ruling has no application to the case which they present of a bank in the United States which receives on deposit Mexican bank notes and pays these bank notes to the depositor or his order, if these Mexican bank notes thus received on deposit and paid out to the depositor have not been used for circulation in the United States and after payment to the depositor are not put into circulation in the United States.

The banks say with reference to this Mexican money :

In fact, it does not circulate at all in the United States, in any sense of the term, but is bought purposely for sale to Mexican tourists, and such Mexican mining companies as transact their banking business with banks in the United States and require Mexican money with which to pay their employees in the Republic of Mexico, and to merchants in Mexico, who need it for payment of Mexican customs duties on merchandise imported into Mexico from the United States. Considerable quantities of Mexican bank notes are shipped by the banks along the border to banks in Mexico City, who, in turn, reimburse us in New York exchange at the Mexico market rate.

Upon this statement of the facts, it is held that the banks in the United States thus receiving and paying out Mexican bank notes which have not been, nor are at any time, used for circulation in the United States in lieu of the money or currency of the United States, are not required to pay the tax of 10 per cent thereon.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner.*
A. S. PRATT & SONS, *Washington, D. C.*

INTERNAL-REVENUE OFFICERS.

(17.)

Forbidding writing of personal letters by heads of divisions and other employees in regard to official business.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 17, 1900.

To heads of divisions and other employees of the Internal Revenue Bureau :

Complaint has been made to this office that some of the employees of this Bureau indulge in the practice of advising or criticising officers and employees in the Internal Revenue Service by private communications. Such action on the part of employees of this Bureau tends to friction and annoyance, and must be discontinued at once.

All communications relating to internal-revenue matters must be treated officially, and official communications must not be supplemented by a private communication, unless so supplemented by the Commissioner or by his instructions.

Employees of this Bureau are, therefore, advised that all communications relating to the business of the Internal Revenue Bureau and addressed to employees in the Internal Revenue Service, or to individuals, must be submitted to the head of the division for revision and presented to the proper officer for signature.

G. W. WILSON, *Commissioner.*

(29.)

Correspondence with the office of Internal Revenue.

[Int. Rev. Circular No. 550.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 1, 1901.

To collectors of internal revenue and others concerned :

The correspondence of this office being very large, the following revised rules relative thereto are published for the information and guidance of internal-revenue officers. A close observance of these regulations will materially expedite the public business, and will be expected and required in all cases :

1. All communications to this office must be addressed to the Commissioner of Internal Revenue, without regard to the fact that letters are often signed by an acting or deputy commissioner or chief clerk.

2. All official letters, reports, and communications should be carefully folded to conform as nearly as possible to the standard size, 3½ by 8 inches, as indicated in the printed space on the back of all forms, and properly indorsed with the name of the writer, his post-office address, the date of the letter, or, in case of a report, the month or period, a

brief statement of the subject, and the number of inclosures in the order indicated on the printed blank on paper furnished to internal-revenue officers, the whole carefully secured by an elastic band.

3. All letters from this office calling for information should be answered as promptly as possible. When delay in obtaining the information is unavoidable, receipt of the letter should be acknowledged and the cause of the delay stated.

4. In forwarding reports to this office required by law or regulations, it is not necessary to send any communication, unless such reports require explanation; but duplicate forms, copies of papers, affidavits, or other miscellaneous matter should never be sent without an explanatory letter.

5. When reference is made in letters addressed to this office to regulations of the office or printed circulars, the date of such regulation or circular should be given, as well as the number.

6. To avoid delay in consulting the records, and to insure the continuation of correspondence through the proper channels, revenue officers are required, when replying to letters from this office, to give, in addition to the date of the letter to which they reply, the marginal initials that appear upon the upper left-hand corner only, as, for instance, "In reply to yours of the 11th of August (C. A. B., W. H.)." If previous letters have been written on the same subject to which it is necessary to refer, the dates and initials of the same should be given.

7. Each subject should be presented to this office in a separate letter, with a view to a more prompt reference to the proper division and a more ready reply than can otherwise be obtained.

This rule must be strictly followed, and the prompt and special attention of all internal-revenue officers is directed to it, to the end that confusion may be avoided and the business of the office expedited.

G. W. WILSON, *Commissioner*.

(56.)

Charges against internal-revenue officers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1900.

To internal-revenue collectors and agents:

Hereafter, in all cases where charges of dereliction of duty, inefficiency, or other complaints are made to this office against subordinate officers or employees in the Internal Revenue Service by collectors or agents, care should be taken to state specifically in the report the status of the person against whom the charge or complaint is made.

In case of storekeepers, gaugers, and storekeeper-gaugers, the report should show whether the officer holds an excepted place under Civil Service Rule VI, or a nonexcepted place.

In all cases where the delinquent is not a commissioned officer, but merely a man designated to act as storekeeper or storekeeper-gauger under section 3155, Revised Statutes, that fact should be indicated in the report.

The above information is required for the purpose of expediting correspondence relating to the discipline of the Service.

G. W. WILSON, *Commissioner*.

(117.)

Suit against a collector of internal revenue—Jurisdiction.

The United States circuit court has no original jurisdiction in the case of a suit against a collector of internal revenue to recover taxes alleged to have been illegally collected, when the parties are citizens of the same State and the amount claimed is less than \$2,000.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 1, 1900.

To collectors of internal revenue and others concerned:

The appended opinion of the United States circuit court for the southern district of Ohio, regarding jurisdiction in cases of suits against collectors of internal revenue to recover taxes alleged to have been illegally collected, etc., is published for the information of internal-revenue officers and others concerned.

G. W. WILSON, *Commissioner*.

UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.—No. 5337.

Cincinnati Brewing Company, a corporation under the laws of the State of Ohio, plaintiff. v. Bernhard Bettmann, collector of internal revenue, first collection district of Ohio.

This case is submitted to the court upon demurrer to the petition, the ground of demurrer being that the court has no jurisdiction of the subject of this action.

The petition shows that during the forenoon on the 24th day of July, 1897, the plaintiff purchased of the defendant internal-revenue stamps of the face value of \$22,600, and was allowed by the defendant a deduction from the face value thereof of 7½ per cent under the provisions of section 3341 of the Revised Statutes of the United States. Afterwards, in the afternoon of the same day, the President of the United States signed the act of Congress of July 24, 1897, by which the provisions of said section 3341, authorizing the deduction, was repealed, and that afterwards the defendant, acting under the instructions of the Commissioner of Internal Revenue, collected of the plaintiff the amount of the deduction, to wit, \$1,695, payment being made by the plaintiff under protest. This suit is now brought to recover the said sum of \$1,695 upon the ground that the collection thereof was illegal.

The petition further shows that the parties are citizens of the State

of Ohio, or, rather, fails to show that they are citizens of different States, and that the amount claimed is less than \$2,000.

Under the fiftieth section of the act of Congress of June 30, 1864, providing for internal revenue, etc. (13 Stat. L., 241), extending the provisions of the act of Congress March 2, 1833 (4 Stat. L., 632), to all cases arising under the laws for the collection of internal-revenue duties, the action might have been maintained, but section 50 of the internal-revenue act of 1864 was repealed by the sixty-eighth section of the act to reduce internal-revenue taxation of July 13, 1866 (14 Stat. L., 172), and such suits must now be brought in the State courts, although they may be removed thence under the provisions of section 643 of the Revised Statutes of the United States. This suit should have been brought in the State court, and the defendant would then have had the option of trying it there or removing it to this court.

The demurrer will be sustained and the case dismissed at the costs of the plaintiff.

(4 Stat. L., 632; 13 Stat. L., 241; 14 Stat. L., 172; secs. 629 and 643, Rev. Stats. U. S.; *Insurancce Company v. Ritchie*, 72 U. S., 541; *City of Philadelphia v. Collector*, *ibid.*, 720; *Collector v. Hubbard*, 79 U. S., 8; *Vinal v. Improvement Company*, 34 Fed. Rep., 228; *Crawford v. Hubbard*, 89 Fed. Rep., 1; *Nunn, Collector, v. Wm. Gerst Brewing Company*, 98 Fed. Rep., —.)

(171.)

Rules regulating the form and execution of official bonds of gaugers, storekeepers, and storekeepers and gaugers.

[Int. Rev. Circular No. 576.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 2, 1900.

From and after this date the following rules will be strictly enforced in the execution of the official bonds of gaugers, storekeepers, and storekeepers and gaugers:

PENAL SUM OF BONDS.

The penal sum of the official bonds of gaugers, storekeepers, and storekeepers and gaugers is hereby fixed at \$5,000.

RENEWAL OF BONDS.

Official bonds may not be renewed at the will of the principal or surety, but only by direction of the Commissioner, and the substitution of one corporate company for another as surety on a bond will not be permitted, except by direction of the Commissioner, or after the bond has run for a period of four years and a renewal thereof is required by this office.

GENERAL RULES APPLICABLE TO THE PREPARATION AND EXECUTION OF BONDS.

1. The *Christian* names must be written in the body of the bond in full, and so signed to the bond.

2. The residence of the principal and of each surety must be distinctly stated in the bond.

3. The bond must be dated.

4. A seal must be attached to each signature.

5. Each signature must be made in the presence of two persons, who must sign their names as witnesses, except where a guaranty company is surety, its corporate seal affixed being itself sufficient evidence as to its officers signing.

6. There must not be less than two individual sureties; but one corporate surety duly qualified under the act of Congress of August 13, 1894, may be accepted as sole surety.

7. The sureties must justify in amounts the aggregate of which will be equal to *twice* the penal sum of the bond.

8. Each surety must make and sign an affidavit of the amount he is worth over and above all his debts and liabilities and such exemptions as may be allowed by law. In the case of corporate sureties, this statement under oath must be made in the manner set forth in the form of affidavit, acknowledgment, and justification prescribed for a guaranty or surety company.

9. The sureties, other than corporate sureties, must state, under oath, that they are not responsible on the bond of any other official, or, if so liable, the amount of such liability.

10. The oath of office and the affidavits of the sureties must be taken and signed before an officer authorized to administer oaths generally, who must certify that he administered the oaths. If the oath of office or the affidavits are taken before a clerk of a court of record, a United States commissioner, or a notary public, whose official seal is thereto affixed, or before a judge of a United States court, authority to administer the oaths need not be shown; but if taken before an officer who has no seal, his authority to administer oaths must be certified by the clerk of a court of record having official knowledge of that fact, under seal.

11. The official oath must be of the same date as that of the bond, or of a subsequent date.

12. No surety can be permitted to hold office under his principal.

13. Married women are not taken as sureties. If a woman signs a bond, a statement of the officer before whom she qualifies that she is unmarried should accompany the bond.

14. Erasures and interlineations should be avoided as far as possible. When, however, there are erasures or interlineations, if they were made before the bond was signed, this should be expressly stated therein; but if made after signing, the formal consent of all the parties thereto should accompany the bond.

INSTRUCTIONS AS TO STAMPING BONDS.

Under the terms of the act of June 13, 1898, each bond must have attached thereto a 50-cent documentary stamp. This stamp will be affixed by the principal and canceled in accordance with the regulations as hereinafter stated.

The said act further requires that where the guaranty is by any fidelity, guaranty, or surety company an additional stamp must also be affixed to the bond at the rate of one-half of one cent on each dollar or fractional part thereof of the premium charged.

A stamp of the denomination of 10 cents must also be affixed to the bond by the terms of the act if it bears a certificate of any description *required by law* not otherwise specified in the act.

The regulations require that these stamps shall be canceled by writing or stamping thereon with ink the initials of the name and the date when attached, or by cutting and canceling said stamp with a machine or punch which will affix the initials and date.

In case the stamp is of the denomination of 10 cents or upwards, it is required that the person affixing it, if he does not cancel it by cutting or perforating it with a machine which affixes his initials and the date, shall, in addition to writing or stamping thereon his initials and the date (the initials and the date being necessary in the cancellation of all stamps), "mutilate said stamp by cutting three parallel incisions lengthwise through the stamp, beginning not more than one-fourth of an inch from one end thereof and extending to within one-fourth of an inch of the other end." (Department Circular No. 142, Internal Revenue No. 549, December 1, 1899.)

G. W. WILSON, *Commissioner*.

OFFICIAL RECORDS.

(104.)

Internal-revenue records—Collectors prohibited from giving out records or copies thereof.

The regulations prohibiting collectors from giving out records or copies thereof to private persons or to local officers, or to produce such records or copies thereof in a State court, are sustained.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., April 20, 1900.

To collectors of internal revenue and others concerned:

The appended opinion of the Supreme Court of the United States, in the case of John T. Boske, Sheriff of Kenton County, Kentucky, Appellant, v. David N. Comingore, is published for the information of internal-revenue officers and all others concerned.

G. W. WILSON, *Commissioner*.

SUPREME COURT OF THE UNITED STATES.—No. 370.—OCTOBER TERM, 1899.

John T. Boske, Sheriff of Kenton County, Kentucky, Appellant, v. David N. Comingore.

[Appeal from the district court of the United States for the district of Kentucky.]

[April 9, 1900.]

Mr. Justice HARLAN delivered the opinion of the court.

This is an appeal from a final order of the district court of the United States for the district of Kentucky discharging appellee, United States internal-revenue collector for the sixth collection district in Kentucky, from the custody of the appellant as sheriff of Kenton County, in that commonwealth.

The discharge was upon the ground that the imprisonment and detention of the appellee were in violation of the Constitution and laws of the United States. That ruling presents the only question to be considered.

Under date of April 15, 1898, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, promulgated certain regulations for the government of collectors of internal revenue, as follows:

"All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose. Collectors are hereby prohibited from giving out any special-tax records or any copies thereof to private persons or to local officers, or to produce such records or copies thereof in a State court, whether in answer to *subpœnas duces tecum* or otherwise. Whenever such *subpœnas* shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this Department. The information contained in the records relating to special-tax payers in the collector's office is furnished by these persons under compulsion of law for the purpose of raising revenue for the United States; and there is no provision of law authorizing the sending out of these records, or of any copies thereof, for use against the special-tax payers in cases not arising under the laws of the United States. The giving out of such records, or any copies thereof, by a collector in such cases is held to be contrary to public policy and not to be permitted. As to any other records than those relating to special-tax payers, collectors are also forbidden to furnish them, or any copies thereof, at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following paragraph in Rule X of the rules and regulations of the Treasury Department, namely:

"In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the Department, and transmis-

sion to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which make it necessary to decline, in the interest of the public service, to furnish such a copy."

These Treasury regulations being in force, a proceeding was instituted in the county court of Carroll County, Ky.—a court of limited jurisdiction—in the name of the Commonwealth against Elias Block & Sons, for the purpose of ascertaining the amount and value of a large amount of whisky, which, it was alleged, the defendants had in their bonded warehouses for a named period, but had not listed for taxation, and of enforcing the assessment and payment of State and county taxes thereon (Ky. Stat., sec. 4241).

In the progress of that proceeding the Commonwealth of Kentucky, represented by the auditor's agent, took the deposition of Comingore, collector of internal revenue. In answer to questions propounded to him, the collector stated that Block & Sons, owners of a distillery, made monthly reports to his office of liquors manufactured by them and deposited in the bonded warehouses on the distillery premises from 1887 on; that the defendants made application from time to time for permission to withdraw liquors from bond, and that such reports, commencing October 1, 1885, and ending July 1, 1897, were on the files of his office, but not under his control except as collector. He was then asked to file copies of those reports and make them part of his deposition. This he declined to do, "under section 3167 of the Revised Statutes of the United States and the rulings of the Department." That section reads:

"SEC. 3167. If any collector or deputy collector, or any inspector or other officer acting under the authority of any revenue law of the United States, divulges to any party, or makes known in any other manner than may be provided by law, the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, he shall be subject to a fine of not exceeding one thousand dollars, or to be imprisoned for not exceeding one year, or to both, at the discretion of the court, and shall be dismissed from office, and be forever thereafter incapable of holding any office under the Government."

Being asked what rulings of the Department he referred to other than section 3167 of the Revised Statutes, he said: "The Department does not permit the giving out of anything contained in internal-revenue returns or documents by a collector, storekeeper, or any other officer of a collection district for purposes other than those which the statutes of the United States contemplate." That ruling he said was made by the Secretary of the Treasury through the Commissioner of Internal Revenue.

In consequence of the refusal of the collector to file and make part of his deposition copies of the above reports of the defendants, the notary public before whom his deposition was taken adjudged him to be in contempt and ordered him to pay to the Commonwealth a fine of \$5 and to be confined in the county jail for six hours, or until he was willing to furnish the copies called for or permit access to the records of his office in order that information might be obtained to be used as evidence in the above case.

The matter having been reported by the notary public to the Carroll County court, as required by section 538 of the Kentucky Civil Code of Practice, that court made the following order:

"It is, therefore, ordered and adjudged by the court that the plaintiff's motions be sustained, and that plaintiff is entitled to use as evidence the

facts stated in the reports and papers filed by any or all of the defendants in the office of the collector of internal revenue for the sixth district of Kentucky, and also such facts as are stated in the reports made to said office by certain officers known as United States storekeepers, and any other similar records, papers, documents, or exemplifications in said office tending to show the amount of liquors on hand at the distillery of the defendants on the 14th day of September, 1889, 1890, 1891, 1893, 1894, 1895, 1896, and on the 15th day of November, 1892; it is further ordered that the witness, D. N. Comingore, make or cause to be made, or permit the plaintiff, its agent or attorneys, to make true copies of such of said papers as the plaintiff or its attorneys may demand, and that said Comingore, as collector, attest the same and attach his seal of office thereto, if he has such seal, and that he permit the plaintiff or its agents or attorneys to compare said copies with the originals and verify same, and that he shall also testify further in regard to same, if demand be made, and leave is hereby given to complete the taking of said deposition on giving proper notice, and for this purpose the clerk is directed upon request of plaintiff's attorneys to transmit said deposition as now on file to W. A. Price, notary public, Covington, Ky. It is further adjudged that the action of the notary public, Price, in adjudging the witness, D. N. Comingore, to be in contempt for failure to file copies of reports, papers, documents, and exemplifications or to testify as to their contents, as requested, be sustained and affirmed, and that the Commonwealth of Kentucky recover of said D. N. Comingore the sum of \$5 as a fine, and that he be taken by the sheriff of Kenton County, Ky., and confined in the jail of said county for the space of six hours or until he signifies his willingness to comply with the request made in the deposition attempted to be taken, as follows: Please file official copies of the reports made to your office by Block & Sons as to the amount of liquor which they manufactured and deposited in the bonded warehouses located on their distillery premises from the year 1887 down to the present time, and also official copies of applications made by them to your office during said time for permission to withdraw such liquors from bond. Also with the following request: Please file official copies of such reports of the United States storekeepers as show the liquors on hand at the warehouses on the distillery premises of the defendants in Carroll County on September 15, 1890, September 15, 1891, November 15, 1892, September 15, 1893, 1894, 1895, and 1896."

This action of the country court having been brought to the attention of the collector, he still refused to give the copies called for or to allow access to or inspection of the records of his office for the purposes indicated by the questions propounded to him. He was thereupon again held by the notary public to be in contempt, and, the petition states, that officer adjudged that "the Commonwealth of Kentucky recover of your petitioner the sum of \$5 as a fine, and that he be taken by the sheriff or some constable of Kenton County and confined in the jail of said county for the space of six hours, or until he shall signify his willingness to purge himself of the said contempt and testify and give the information from the records and documents under his control and in his custody as collector of internal revenue of the United States for the sixth district of Kentucky or allow an inspection of his records for the purpose of obtaining such information for use as evidence in said action of the Commonwealth of Kentucky *v.* Block *et al.* in said county court," etc.

Having been taken into custody by the sheriff under this order, the collector sued out a writ of habeas corpus and was discharged from

custody by order of the United States district court for the Kentucky district.

1. In the brief of the Assistant Attorney-General some doubt is expressed whether we can take cognizance of this case upon appeal from the district court. Prior to the passage of the act of March 3, 1891, establishing the circuit court of appeals, an appeal from the final judgment of a district court on an application for a writ of habeas corpus by or on behalf of one alleged to be restrained of his liberty in violation of the Constitution or any law of the United States went first to the circuit court (Rev. Stat. U. S., sec. 763). But by the above act of 1891 it was provided that appeals or writs of error may be taken from the district courts or from the circuit courts direct to this court in certain cases, among others, "in any case that involves the construction or application of the Constitution of the United States" (26 Stat., 826, 828, chap. 517, sec. 5). The present case belongs to that class. The appellee, who was discharged upon habeas corpus, invoked the protection of the Constitution against his being restrained of his liberty by the appellant acting under an order of commitment issued by an inferior State court; and the judgment of the district court proceeded upon the ground that the proceedings against him were inconsistent with the laws of the United States and with regulations of the Treasury Department legally prescribed under those laws. Throughout, the contention of the appellant has been that the Constitution forbade the giving of the force of law to those regulations adopted by merely executive officers. We think the case is properly here on appeal as one involving the construction and application of the Constitution of the United States.

2. Of the power of the district court to discharge the appellee if he was held in custody in violation of the Constitution of the United States, no doubt can be entertained. It is true that in *ex parte Royall* (117 U. S., 241, 251), it was said that although a court of the United States had power to discharge one held in custody by State authorities in violation of the Constitution of the United States, it was not bound to interpose immediately upon application being made for the writ, but should exercise the discretion with which it was invested "in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution." Hence, the general rule that the courts of the United States should not interfere by habeas corpus with the custody by State authorities of one claiming to be held in violation of the Constitution or laws of the United States, until after final action by the State courts in the case in which such custody exists. (*Ex parte Royall*, above cited; *New York v. Eno*, 155 U. S., 89, and authorities there cited; *Whitten v. Tomlinson*, 160 U. S., 231, and authorities there cited.) But to this general rule there are exceptions which are thus indicated in *ex parte Royall*.

"When the petitioner is in custody by State authority for an act done or omitted to be done in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or where, being a subject or citizen of a foreign State, and domiciled therein, he is in custody, under like authority, for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign State, or under color thereof, the validity and effect whereof depend

upon the law of nations; in such and like cases of urgency, involving the authority and operations of the General Government, or the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of habeas corpus and discharged prisoners who were held in custody under State authority."

The present case was one of urgency, in that the appellee was an officer in the revenue service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the State authorities might have interfered with the regular and orderly course of the business of the Department to which he belonged. The district court, therefore, did not err in determining the question of constitutional law raised by the application for a writ of habeas corpus, and rendering final judgment.

3. We come then to inquire whether the imprisonment of the appellee was in violation of the Constitution or laws of the United States. This question was fully examined in the elaborate and able opinion of Judge Evans, of the district court (96 Fed. Rep., 552).

The commitment of the appellee was because of a refusal to file with his deposition copies of certain reports made to him by Block & Sons, distillers, of liquors manufactured by them and deposited in the bonded warehouses on the distillery premises during a specified period. Manifestly, he could not have filed the copies called for without violating regulations formally promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. If these regulations were such as the Secretary could legally prescribe, then, it must be conceded, the State authorities were without jurisdiction to compel the collector to violate them.

The Commissioner of Internal Revenue is an officer in the Department of the Treasury. (Rev. Stat. U. S., sec. 319.) And the Secretary of the Treasury, as the head of an Executive Department of the Government, was authorized "to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it." (Rev. Stat. U. S., sec. 161.)

Now, the reports or copies of reports in the possession of the collector—for not producing copies of which he was adjudged to be imprisoned—were records and papers appertaining to the business of the Treasury Department and belonging to the United States. The Secretary was authorized by statute to make regulations, not inconsistent with law, for the custody, use, and preservation of such records, papers, and property. The Constitution gives Congress power to make all laws necessary and proper for carrying into execution the powers vested by that instrument in the Government of the United States or in any Department or officer thereof. (Const., Art. I, sec. 8.) That power was exerted by Congress when it authorized the Secretary of the Treasury to provide by regulations not inconsistent with law for the government of his Department, the conduct of its officers and clerks, the distribution and performances of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. The regulations in question may not have been absolutely or indispensably necessary to accomplish the objects indicated by the statute. But that is not the test to be applied when we are determining whether an act of Congress transcends the powers conferred upon it by the Constitution. Congress has a large discretion as to the means to be employed in the

execution of a power conferred upon it, and is not restricted to "those alone without which the power would be nugatory;" for, "all means which are appropriate, which are plainly adapted" to the end authorized to be attained, "which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground." (*McCulloch v. Maryland*, 4 Wheat., 316, 415, 421, 423.)

In the more recent case of *Logan v. United States* (144 U. S., 263, 283, 293), this court, referring to the above constitutional provision, said that "in the exercise of this general power of legislation, Congress may use any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution." Again, "Every right created by, arising under, or dependent upon the Constitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object."

Can it be said that to invest the Secretary of the Treasury with authority to prescribe regulations not inconsistent with law for the conduct of the business of his Department, and to provide for the custody, use, and preservation of the records, papers, and property appertaining to it, was not a means appropriate and plainly adapted to the successful administration of affairs of that Department? Manifestly not. The bare statement of the proposition suggests this conclusion, and extended argument to support it is unnecessary.

This brings us to the question whether it was inconsistent with law for the Secretary to adopt a regulation declaring that all records in the offices of collectors of internal revenue, or any of their deputies, are in their custody and control "for purposes relating to the collection of the revenues of the United States only," and that collectors "have no control of them, and no discretion with regard to permitting the use of them for any other purpose."

There is certainly no statute which expressly, or by necessary implication, forbade the adoption of such a regulation. This being the case, we do not perceive upon what ground the regulation in question can be regarded as inconsistent with law, unless it be that the records and papers in the office of a collector of internal revenue are at all times open of right to inspection and examination by the public despite the wishes of the Department. That can not be admitted. The papers in question, copies of which were sought from the appellee, were the property of the United States, and were in his official custody under a regulation forbidding him to permit their use except for purposes relating to the collection of the revenues of the United States. Reasons of public policy may well have suggested the necessity, in the interest of the Government, of not allowing access to the records in the offices of collectors of internal revenue, except as might be directed by the Secretary of the Treasury. The interests of persons compelled, under the revenue laws, to furnish information as to their private business affairs would often be seriously affected if the disclosures so made were not properly guarded. Besides, great confusion might arise in the business of the Department if the Secretary allowed the use of records and papers

in the custody of collectors to depend upon the discretion or judgment of subordinates. At any rate, the Secretary deemed the regulation in question a wise and proper one, and we can not perceive that his action was beyond the authority conferred upon him by Congress. In determining whether the regulations promulgated by him are consistent with law, we must apply the rule of decision which controls when an act of Congress is assailed as not being within the powers conferred upon it by the Constitution—that is to say, a regulation adopted under section 161 of the Revised Statutes should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress.

In our opinion, the Secretary, under the regulations as to the custody, use, and preservation of the records, papers, and property appertaining to the business of his Department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character.

The judgment of the district court is affirmed.

(141.)

Confidential information in reports of revenue agents.

[Int. Rev. Circular No. 574.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., June 2, 1900.

To collectors of internal revenue, United States

district attorneys, and internal-revenue agents:

It has come to the knowledge of this office that information procured by internal-revenue officers and employees in the discharge of their official duties, relating to frauds upon the Government and embraced in reports of revenue agents to this office, copies of which reports are furnished to collectors of internal revenue and United States district attorneys, has in some instances been conveyed to persons accused of, or detected in, fraudulent practices, or to their attorneys or friends, thereby exposing revenue officers and employees to attack and jeopardizing the interests of the Government by placing in the hands of conspirators and violators of the law information relied upon for the protection of the interests of the Government.

This office holds that information in such cases secured through officers and employees of the Internal Revenue Service must be regarded as in the strictest confidence, and that any person imparting such information to unauthorized persons is guilty of a gross breach of official confidence, justifying immediate dismissal from office.

Collectors of internal revenue, United States attorneys, and internal-

revenue agents will furnish the Government employees under their supervision with a copy of this circular.

G. W. WILSON, *Commissioner*.

(224.)

Official records.

Data from the returns made by a distiller are not required to be furnished for use of private litigants in a State court.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 8, 1900.

SIR: This office has received papers referred by you without letter of transmittal, which are herewith returned. They appear to show that in a suit between private litigants in the circuit court of Anderson County, Ky., certain information from the records of the office of the collector of internal revenue for the fifth district was desired by one of the parties, and thereupon the court issued a rule (recited to be in accordance with rule X of the Rules and Regulations of the Treasury Department) calling upon Collector Yerkes to produce the desired data from his records. The collector answered by letter that the records in question had been destroyed by the burning of the collector's office in 1891. The rule was then issued upon you, calling for the desired information from the records of the Department.

The information called for is a statement of the serial number of packages of whisky produced at registered grain distillery No. 424 of J. M. Walker, during the years 1886 and 1887; the names of the person or persons in which the whisky was produced and entered in the warehouse; the number of gallons in each package, and the same data in regard to withdrawal from warehouse.

It is deemed probable that from the duplicate returns made to this office by the distiller and by the gauger and storekeeper the information desired would be disclosed. This office is in doubt, however, whether Rule X of the Rules and Regulations of the Treasury Department applies to this case.

It does not appear that the distiller or his legal representative is a party to the suit in which the data are to be used. The United States is certainly not a party and has no interest in the suit. In view of these facts, it would seem that, as the returns of the distiller which embodied the information were made by him under compulsion of the internal-revenue laws, they are properly to be regarded as belonging to that class of papers which, on grounds of public policy, are held to be privileged, and the production of which in evidence, in a suit between other parties, the law will not enforce.

It was held *in re Weeks* (82 Fed. Rep., 729) that—

A State has no right to Federal instruments of purely Federal character for proof, unless they are left within its reach.

It would seem to follow that if a State has no such right a private litigant has not.

It was also held *re in Comingore* (96 Fed. Rep., 552; T. D. 21584) that—

There is no statute of the United States requiring or permitting a collector of internal revenue to make or certify copies of reports on file in his office, and a State has no authority, either in its sovereign capacity or as a litigant, to impose such duty upon him.

This view was sustained by the Supreme Court in *Boske v. Comingore* (177 U. S., 459; T. D. 104).

Unless, therefore, it shall be made to appear that the distiller or his representative seeks information, or if not, that the withholding of the same would work grave injustice and wrong, it is suggested that answer be made respectfully declining to furnish the data.

Respectfully, ROBT. WILLIAMS, Jr., *Acting Commissioner*.
The SECRETARY OF THE TREASURY.

(226.)

Forbidding disclosures of information contained in official records.

[Int. Rev. Circular No. 583.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 10, 1900.

*To collectors of internal revenue, revenue agents,
and subordinate officers of internal revenue:*

Referring to the frequent requests for information concerning the public records relating to internal-revenue taxes and internal-revenue taxpayers, collectors of internal revenue are advised as follows:

First. Information contained in the reports of taxpayers and the records of collectors of internal revenue is obtained by virtue of law, and, with the exception of such information as is contained in Record No. 10, must not be disclosed to the public, nor to any officer of any department of the Government, nor to any person except the authorized agents of this Bureau and the Secretary of the Treasurer or upon his order, without instruction from the Commissioner of Internal Revenue.

Second. Where information concerning such records is called for, collectors will under no circumstances whatever comply with such request until they shall have communicated with the Commissioner of Internal Revenue and receive instructions concerning the same, except where the request is from the Secretary of the Treasury, in which case the request will be complied with at once without communicating with the Commissioner of Internal Revenue.

Collectors and revenue agents will acknowledge receipt of this circular, and supply the employees under their supervision with a copy of the same. They will see that the instructions contained therein are complied with.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

REPORTS.

(10.)

Entries in book 25 and quarterly reports.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

To collectors of internal revenue:

It appears from the reports of accounting officers of this office that in some instances collectors are not making a record of instruments stamped in book No. 25, nor a report of instruments stamped on Form 8.

Attention is, therefore, invited to regulations, series 7, No. 2, page 16. Collectors will see that the proper entries are made in book No. 25 with respect to all instruments presented for action under section 13 of the act of June 13, 1898, and that a report is made from such record for each quarter.

Collectors are also advised that they are not authorized to remit the penalty in such cases unless the instrument or document is presented for their action within twelve calendar months after the making or issuing thereof.

G. W. WILSON, *Commissioner.*

(147.)

Reports on Form 117.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 5, 1900.

To collectors of internal revenue:

This office is not infrequently in receipt of telegrams or letters from owners or shippers of articles taxable under the internal-revenue laws, which have been seized for violations of law, as charged. In quite a large per cent of such cases, such telegrams or letters contain the first information of the seizure. In such cases, of course, this office must first call upon the collector for a report of the facts and circumstances, and await his reply, before being able to answer the intervener and to determine whether there was a sufficient cause of action against the property.

In view of the embarrassment caused by the absence of prompt and

full reports by the seizing officer of this office, it is ordered that hereafter there shall be no delay on the part of collectors in making their reports on Form 117, with whatever statement of the cause of seizure is necessary to enable this office to know the nature of the offense charged for which the property is held to be forfeited.

G. W. WILSON, *Commissioner*.

(98.)

Instructions regarding reports on Form 143.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 16, 1900.

To collectors of internal revenue:

Hereafter you will please forward to this office, on the 1st of each month, report on Form 143 for transmittal to the Civil Service Commission, inclosing said report in a letter addressed to the Commissioner of Internal Revenue.

Your attention is again called to the fact that no changes in the list of war-revenue deputies should be entered on this report, nor temporary designations of persons to act as storekeepers or storekeeper-gaugers under section 3155, Revised Statutes.

G. W. WILSON, *Commissioner*.

SEIZURES AND VIOLATIONS OF LAW.

(135.)

Warrants of distraint.

Issuance of "omnibus" warrants of distraint prohibited.—Distraint warrants should be separate and prompt returns should be required from deputies in every case.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 28, 1900.

SIR: Revenue Agent William A. Gavett brings to my attention a practice in your office which seems to need amendment. He states that warrants of distraint are issued against the property of, possibly, eight, ten, or twelve individuals, all the names being included in one warrant, thus exposing to each person named in the warrant the confidential business of the Service as to all the others likewise named.

This practice, it seems clear, must tend to destroy the force and effect carried by an individual warrant. It is not only, however, on this account that the practice is objectionable. An omnibus warrant placed in the hands of a division deputy enables him to collect the amounts due from a portion of the individuals named in the warrant and hold

such moneys pending the collection from others, and when called upon to report results he may claim that the matter is still in abeyance.

You are instructed, therefore, that a separate and distinct warrant of distraint should be issued against every person or firm from whom taxes are due that are not otherwise collectible, and such warrant should be issued promptly on the expiration of notices on Forms 17 and 21.

Prompt returns should be required in all such cases, and if the taxes are not collected the reasons should be reported.

Respectfully,

G. W. WILSON, *Commissioner*.

Mr. H. S. HARKINS, *Collector Fifth District, Asheville, N. C.*

(176.)

Violations of internal-revenue laws to be promptly reported on Form 166.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., July 12, 1900.

To collectors of internal revenue:

It is noted that some collectors, in making reports of violations of law on Form 166, delay making such reports until after the persons are assessed.

Collectors are requested to report promptly on Form 166 as soon as the violation of law is discovered, and to state, in accordance with instructions at the foot of page 2 of said form, the date of return on Form 11, if any has been made, or the list on which the tax will be reported for assessment.

ROBT. WILLIAMS, Jr., *Acting Commissioner*.

(192.)

Notice to surety companies.

When the surety on a bond is a surety company, notice should be given such surety before suit.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., August 3, 1900.

To collectors of internal revenue:

With a view to the prevention of an accumulation of deficiency assessments, and other assessments, against distillers and others, the following instructions are issued for the guidance of collectors in cases where the parties incurring the liability have given bonds of a surety company or corporation:

Whenever the principal fails to respond to the demands of the collector for payment of the assessment, or of the taxes due, collection will be enforced by distraint, if possible.

When the property of the principal subject to distraint has been exhausted and the indebtedness has not been discharged, notice will be given by mail to the local representative of the surety company demanding payment of the outstanding indebtedness of the principal. Collectors will understand, however, and will so advise the local representative of the bonding company, that any failure to receive notice of an outstanding liability in no way affects the legal liability of the surety on the bond under the act of August 13, 1894.

This instruction is due to the fact that this office has received assurances from representatives of several surety companies that it is not their desire, in any case, to contest in court the payment of obligations which may have been incurred by them as sureties for distillers and others, unless in such cases as there may be legal grounds for defense.

This office recognizes that it will be mutually advantageous to the Government and the surety companies that they should be given early notice in such cases, and as a result it is hoped the practice will greatly diminish the accumulation of taxes against distillers and also assist in a much closer and more prompt collection of this class of taxes without suit.

G. W. WILSON, *Commissioner*.

(206.)

Confessions of violations of law and compromises induced by threats and duress.

[Int. Rev. Circular No. 579.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 30, 1900.

To collectors and revenue agents:

It has come to the knowledge of this office that in some instances written confessions of violations of law are secured from accused persons under duress, while in other instances delinquents are induced by solicitation or by threats to make an offer in compromise under section 3229, United States Revised Statutes, which section authorizes the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, to compromise civil and criminal cases arising under internal-revenue laws. Neither the ends of justice nor the statutes call for such proceedings. They are wholly unwarranted by law and the regulations of this office, and must cease at once. In this connection attention is invited to the fourth paragraph of decision 18854, published in TREASURY DECISIONS, No. 3, January, 1898, which is as follows:

No solicitation of an offer should be made and no delinquent should be induced by threats to invoke the power of the Commissioner to compromise and no assurance should be given of the probable action of the

Commissioner if an offer is made, but where the individual is ignorant of such a provision of law and desires to make his appeal for clemency in the manner provided it is the duty of the collector to give him suitable instructions.

It is not to be understood from anything contained in this circular that any abatement of the efforts on the part of officers necessary to the protection of the interests of the Government, the collection of taxes, or the vigorous prosecution of willful violations of law is to be permitted, and it must be understood that this office will not tolerate practices which are manifestly inconsistent with the law and the dignity and welfare of the public service.

Written confessions and admissions of violations of law secured under duress by internal-revenue officers, and offers of compromise obtained by solicitation or threats, will be held by this office to be void, and officers who are instrumental or concerned in securing such confessions and offers in compromise by the means indicated will be held to have disregarded the regulations of this office and will be dealt with accordingly.

Collectors and revenue agents will acknowledge the receipt of this circular and see that officers and employees acting under their supervision are furnished with a copy thereof.

G. W. WILSON, *Commissioner*.

(209.)

Seizure and sale of property forfeited under internal-revenue laws or distrained for unpaid taxes.

[Int. Rev. Circular No. 580.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 6, 1900.

To collectors of internal revenue:

The attention of collectors is invited to the regulations, series 7, No. 2, relating to the proceedings and expense of seizure and sale in the case of property seized as forfeited under internal-revenue laws or distrained for unpaid taxes.

Reports of collectors received at this office in some instances indicate that property which should have been sold, under section 3460, United States Revised Statutes, has been allowed to accumulate to an extent unwarranted by law and regulations, thus lessening the value or rendering almost worthless the property under seizure and incurring unnecessary expense with regard to the same, while in the case of property distrained for unpaid taxes the bills presented as the costs of distraint and sale are excessive to such a degree in some cases as to show a disregard of the public interest.

Collectors are reminded that all seized property placed in their cus-

today must be fully accounted for and that excessive bills for expenses growing out of negligence and disregard of the regulations in the care and final disposition of the same will be disallowed.

Collectors who are now carrying on their reports as on hand property of this character should without unnecessary delay dispose of the same in accordance with the instructions contained in the regulations.

G. W. WILSON, *Commissioner*.

GENERAL.

(91.)

Disposition of moneys arising from sales of land acquired under the internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 9, 1900.

To collectors of internal revenue:

Hereafter moneys arising from the sale of land acquired under the internal-revenue laws, or from rent of same, should be deposited by collectors to the credit of the Treasurer of the United States as internal-revenue collections, and not as miscellaneous receipts, and the net proceeds of sales should be entered on Form 58.

Regulations, series 7, No. 2, revised, and series 7, No. 12, revised, are modified accordingly.

G. W. WILSON, *Commissioner*.

Approved: L. J. GAGE, *Secretary of the Treasury*.

(60.)

Uncollectible taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 6, 1900.

To collectors of internal revenue:

Instances sometimes arise where taxes that have been credited to collectors as being uncollectible subsequently become collectible, and this office is not informed as to any effort being made to collect the same.

Your attention is called to instructions in the regulations, series 7, No. 14, revised, page 15, as follows:

It is the duty of the collector to use the same diligence to collect a tax after it has been abated as uncollectible, or as in suit, as before abatement.

Upon the receipt of this letter you are instructed to examine such cases in your district, and, when the party assessed has become possessed of property subject to distraint since the tax has been credited

as uncollectible, you will proceed to collect the same as if it had not been credited.

Collectors should appreciate the fact that there is no other officer or representative of the Government but themselves to look after claims of this kind, and that they are not relieved from further responsibility after taxes have been credited as uncollectible.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(111.)

Course to be taken to recover taxes due, but unassessable (without waiver) because of the fifteen months' limitation.

[Int. Rev. Circular No. 567.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1900.

To collectors of internal revenue:

Your especial attention is called to the decision of the United States Supreme court, in the case of the Dollar Savings Bank, Plaintiff in Error, *v.* the United States, as given on pages 89 and 90 of Volume XIX, Internal Revenue Record, where it is held that the Government may bring an action for the recovery of taxes, not only of such as are assessed, but also of those which are not assessed, and likewise of those which, on account of the statute of limitations, are not assessable. It is desired that you exert yourself to discover all cases in your district where any taxes (owing to the limitation of section 3182, Revised Statutes) can not now be assessed without a waiver of this limitation by the taxpayer.

This decision affirms the right to collect by suit internal-revenue taxes which have not been assessed, and that this right is not affected by any delay on the part of the proper officer to make an assessment of the tax. But the collection of taxes by suit involves certain court expenses both to the United States and to the taxpayer, and this office prefers, in the interests of an economical administration, that the liability of the taxpayer to the United States be adjusted, if possible, without recourse to the courts of law. To this end, circular letter No. 4 was promulgated March 27, 1874, instructing collectors to notify delinquents that if they will make a written waiver of their exemption from assessments across the face of their returns the taxes will be assessed without penalty.

The question having arisen as to whether a waiver without any return would be accepted, you are informed that, as this action on the part of the taxpayer is suggested merely for the purpose of indicating his assent to a charge on the list of the tax to be liquidated by the payment of the tax only, a waiver clearly setting forth his assent to settlement of the

particular tax under consideration by assessment may be accepted without the usual return. Further, you are directed not to accept waivers unless the parties fully understand what they are signing.

G. W. WILSON, *Commissioner*.

(159.)

Attorneys—Refunding claims.

Attorneys duly registered in the Treasury Department and filing powers of attorney will be recognized in the prosecution of refunding claims.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1900.

SIR: In reply to your letter of the 6th instant, you are informed that attorneys who have been duly registered in this Department, in accordance with Department Circular No. 13, of 1886, will be recognized in the prosecution of claims for the refunding of taxes paid erroneously or in excess, provided a duly executed power of attorney is filed in this office or with the claim by each attorney. Such a power of attorney may authorize an attorney to receive and receipt for a warrant in payment of a claim, but a power of attorney authorizing the indorsement of a warrant must be executed after the allowance of the claim and the ascertainment of the amount due, and must fully describe the warrant.

Respectfully, ROBT. WILLIAMS, Jr., *Deputy Commissioner*.
Mr. A. B. KELLOGG, *Buffalo, N. Y.*

(214.)

Prescribing for use a revised fruit distiller's record No. 25½ and a revised return—Form 15.

[Circular No. 140.—Int. Rev. No. 581.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 17, 1900.

To collectors of internal revenue:

The fruit distillers' record No. 25½ has been revised under date of July 25, 1900, and the same is hereby prescribed for use by all new distillers who shall hereafter commence operations, and by all other distillers so soon as the books now in use by them shall be exhausted, but in no case later than the close of the current season.

In addition to the entries heretofore required, entries will hereafter be made of the serial numbers of the fermenters filled and emptied, and when filled and emptied, of the quantity of brandy gauged and by whom and when inspected.

The dates in two left-hand columns of the record have been arranged

so as to allow entries to be conveniently made on consecutive lines when two or more kinds of materials are received on the same day or materials of any kind are received on same day from two or more persons. Opposite the dates printed in column 10 will be made the several entries required under each heading to the right of said dates.

The fruit distiller's monthly account, Form 15, has also been revised so as to require, in addition to the information heretofore reported, an account of the brandy sold or removed and the name of the person to whom sent and location.

When the revised record No. 25½ is procured, true and exact entries must be made therein promptly each day, and a complete and accurate return must be made each month on the revised Form 15.

Regulations, series 7, No. 7, revised February 19, 1895, supplement No. 1, under the heading, "Returns on Form 15," are hereby so far modified as to require a return on the revised Form 15 to be made for each month until all brandy distilled has been sold or removed.

G. W. WILSON, *Commissioner*.

Approved: O. L. SPAULDING, *Acting Secretary of the Treasury*.

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